

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

- - - - -

David L. Cummin, M.D.,	:	
et al.,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	Case No. 2:15-cv-1043
	:	Judge Sargus
Lanny North, et al.,	:	Magistrate
	:	Kimberly A. Jolson
Defendants.	:	
	:	

- - - - -

VIDEOTAPED DEPOSITION OF DAVID L. CUMMIN, M.D.

- - - - -

Taken at Brunner Quinn
35 North Fourth Street, Ste. 200
Columbus, OH 43215
April 29, 2016, 10:20 a.m.

- - - - -

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A P P E A R A N C E S

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ALSO PRESENT:

Michael Lane - Videographer
Lanny North
David Valkinburg
Edwin Downs
Crystal Cummin

Friday Morning Session

April 29, 2016, 10:20 a.m.

- - - - -

S T I P U L A T I O N S

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It is stipulated by counsel in attendance that the deposition of David L. Cummin, M.D., a Plaintiff herein, called by the Defendants for cross-examination, may be taken at this time by the notary pursuant to notice and subsequent agreement of counsel that said deposition may be reduced to writing in stenotypy by the notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the notary is waived.

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I N D E X

1		
2	Examination By	Page
3	Mr. Lambert - Cross	6
4		
5	David Cummin Exhibits	Page
6	Exhibit 1 - Oath of Office	16
7	Exhibit 2 - Complaint	41
8	Exhibit 3 - Statutes	21
9	Exhibit 4 - Commissioners minutes	127
10	Exhibit 5 - E-mail, 1-6-14	134
11	Exhibit 6 - Letter to Commissioners from Cummin	140
12	Exhibit 7 - ORC 305.03	142
13	Exhibit 8 - Letter 1-9-14	142
14	Exhibit 9 - Swaim Certificate of Death	58
15	Exhibit 10 - Swaim Supplemental Medical Certification	59
16	Exhibit 11 - Letter to Cummin from Fetherolf,	69
17	1-5-12	
18	Exhibit 12 - C19NC Downs Subpoena	69
19	Exhibit 13 - Letter to Fetherolf from Cummin,	70
20	1-23-12	
21	Exhibit 14 - Letter to Cummin from Fetherolf	73
22	Exhibit 15 - Letter to Fetherolf from Cummin,	77
23	2-27-12	
24		

INDEX (CONT'D)

1		
2	David Cummin Exhibits	Page
3	Exhibit 16 - Motion for Order Requiring	84
4	Coroner to Provide Autopsy Photos	
5	and Request for Assessment of	
6	Attorney Fees	
7	Exhibit 17 - Affidavit of Chief Deputy	104
8	David Valkinburg	
9	Exhibit 18 - Letter to North from Cummin,	118
10	3-5-12	
11	Exhibit 19 - Letter from Cummin, 8-27-12	101
12	Exhibit 20 - Journal Entry and Order	121
13	Exhibit 21 - Letter to Cummin from Fetherolf,	220
14	1-10-14	
15	Exhibit 22 - Complaint for Writ of Mandamus	222
16	Exhibit 23 - Dismissal of Writ of Mandamus	222
17	Exhibit 25 - Letter to Commissioners from	176
18	Cummin	
19	Exhibit 25B - Letter to Cummin, 6-3-14	175
20	Exhibit 26 - Invoice, 6-16-14	178
21	Exhibit 27B - Letter to Cummin from Warthman,	191
22	4-24-14	
23	Exhibit 28 - E-mail, 6-20-14	210
24	Exhibit 30 - Letter to Cummin from North,	15
	7-17-14	
	Exhibit 32 - Answers	227
	Exhibit 33 - Cummin's CV	9
	(Original exhibits returned to Mr. Lambert.)	

1 THE VIDEOGRAPHER: We are on the record
2 at 10:20. Would counsel please announce their
3 presence.

4 - - - - -

5 DAVID L. CUMMIN, M.D.
6 being first duly sworn, testifies and says as
7 follows:

8 CROSS-EXAMINATION

9 BY MR. LAMBERT:

10 Q. Dr. Cummin, my name is Randall Lambert
11 and I represent three of the defendants that are
12 involved in this lawsuit that you have pending in
13 Federal Court. We're here today to take you're
14 deposition. I assume you've had your deposition
15 taken before as maybe in your medical practice?

16 A. Not in my medical practice.

17 Q. Have you had your deposition taken
18 before?

19 A. Yes.

20 Q. Okay. You understand in general, then,
21 the procedure we follow in depositions. It's --
22 even though we're informal, it's still under oath.
23 And you are being recorded here today; whatever we
24 say is being recorded, the exchange between us.

1 You understand that?

2 A. I understand.

3 Q. And we have to talk audibly so the
4 court reporter can record everything and so it can
5 be recorded. We all have a tendency sometimes to
6 nod our heads or not answer verbally. But I need
7 you to verbal -- answer verbally, okay?

8 A. Okay.

9 Q. If I give you question that you do not
10 understand, please tell me, or if it's a compound
11 question, which I have a habit of doing at times,
12 let me know and I'll try to rephrase it or restate
13 it so any answer you give is to a question that
14 you understand. Fair?

15 A. Fair.

16 Q. Okay. Give us your name and address
17 for the record.

18 A. David Cummin, 11423 Helber Road,
19 H-E-L-B-E-R Road, Logan, Ohio, 43138.

20 Q. And how long have you lived there?

21 A. Two and a half years.

22 Q. And where did you live before that?

23 A. I lived on -- I'm trying to think of
24 what the road is. I lived on Chieftain before

1 that, but I -- I briefly lived for a couple years
2 up on a road just down the road.

3 Q. Okay. Give us your educational
4 background. Where did you graduate from high
5 school to start?

6 A. I graduated from Upper Arlington High
7 School. And then I went to Ohio State University
8 for five years. And I have a Bachelor's of
9 Science in --

10 Q. Do you have your CV with you?

11 A. I do.

12 Q. Okay. Go ahead and --

13 A. Bachelor's of Science in human
14 nutrition. And then I went to Ohio State
15 University for medical school; I got my M.D.
16 there. And then I went to Grant Medical Center
17 for my three-year residency in family practice.

18 Q. I think I've got exhibits marked
19 through 32. If we can just go ahead and mark your
20 CV -- CV, we'll have it and we don't have to go
21 ahead and do it as -- we'll mark it as Exhibit 33.

22 - - - - -

23 Thereupon, David Cummin Exhibit 33 is
24 marked for purposes of identification.

1				-	-	-	-	-
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2 Q. Is this a copy I can have or do you --

3	A.	It is.
---	----	--------

4 MR. BRUNNER: What I'll do, at a break
5 I'll have copies made for everybody.

6 Q. That's fine. All right. For the
7 record we've marked it as Exhibit 33. And that is
8 the CV you brought with you today, your
9 professional background; is that correct, Doctor?

10	A.	It is.
----	----	--------

11 Q. Okay. Tell us a little bit about your
12 work history, where you've worked, where you've
13 practiced.

14 A. Well, I practiced for almost 18 years
15 in Logan, Ohio, private practice.

16 Q. Is that the only private practice
17 you've had?

18 A. It is.

19 Q. And you are the elected coroner. When
20 were you first elected or when did you first take
21 office, what year?

22 A. I was appointed in -- on July 1st,
23 1999.

24 Q. And you have been the coroner since?

1 A. I have.

2 Q. Other than your private practice and
3 the coroner, have you held any other positions
4 during the last 18 years?

5 A. Elected?

6 Q. Elected or otherwise.

7 A. I've had all kinds of positions, but
8 I'm not sure what positions you're asking for.

9 Q. Well, employment positions. Have you
10 done any other work in or out of the medical field
11 during that time?

12 A. I've been the chief of staff at a
13 hospital.

14 Q. Okay.

15 A. About seven years.

16 Q. Which hospital is that?

17 A. Hocking Valley Community Hospital.

18 Q. Are you currently that?

19 A. No.

20 Q. Okay. When -- during what period were
21 you chief of staff there?

22 A. From 2000 to 2002 and from 2010 to
23 2013. So seven years.

24 Q. And you have hospital privileges there?

1 A. I do.

2 Q. Do you have hospital privileges
3 anyplace else?

4 A. No.

5 Q. Have you ever had hospital privileges
6 anyplace else?

7 A. Yes.

8 Q. Where was that?

9 A. I had hospital privileges at Grant
10 Medical Center when I was a resident.

11 Q. Okay.

12 A. I had hospital privileges at Marion
13 General when I was an ER physician there. I had
14 hospital privileges at Licking Memorial Hospital
15 when I was an ER physician there.

16 Q. Now was that before you started your
17 private practice as -- when you worked as an ER
18 physician?

19 A. Yes.

20 Q. Okay. How many employees do you
21 currently have in your private office?

22 A. Eight.

23 Q. Is that the same number you've
24 maintained over the past let's say five years?

1 A. Yes.

2 Q. How many employees do you currently
3 have in the cor -- coroner's office excluding
4 yourself?

5 A. Two.

6 Q. What are their positions?

7 A. One is a chief coroner investigator.
8 The other one is a coroner investigator.

9 Q. And who holds those positions?

10 A. Linn Warthman, L-I-N-N Warthman,
11 W-A-R-T-H-M-A-N, is the chief investigator. And
12 Jamie Walsh is the coroner investigator.

13 Q. How long have they held those
14 positions?

15 A. Jamie was an investigator for I'm
16 guessing seven years before her resignation for
17 one year. And then she was -- actually, a year
18 and a half. And then she was repositioned July
19 1st of 2015.

20 Linn Warthman was appointed I believe
21 on July 5th of -- I'm sorry, June -- pardon me.
22 January 5th, 2015.

23 Q. During that 18 months Jamie Walsh was
24 not an investigator, did she hold any other

1 position with the coroner's office?

2 A. She was a subcontracted employee.

3 Q. And what did she do as a subcontracted
4 employee?

5 A. All the paperwork, phone calls,
6 gathering of information, office work.

7 Q. Prior to January 1st, 2014, did she do
8 the paperwork and office work for the coroner as
9 part of her job as investigator; was that a
10 combined position?

11 A. She did some of it. She did the -- I
12 mean, we did a lot of things together. But at
13 that time because we had two employees, including
14 herself, but she would help mainly with the
15 invoices.

16 Q. Uh-huh.

17 A. And the bills. That was her main thing
18 outside of that. Now, she does a lot more death
19 certificates and things that I used to do.

20 Q. When you say invoices and bills, that
21 would come into the coroner, you mean, for -- that
22 you would receive?

23 A. Yes.

24 Q. Was she the main person that did that

1 then prior to January 1st, 2014?

2 A. I mean I did some of it, she did some
3 of it.

4 Q. Okay.

5 A. The other investigator did none of it.

6 Q. All right. Taking care of the
7 paperwork then and the bills and the phone, that
8 pretty well -- did that basically stay the same
9 then in 2014 as it had been in 2013 as far as
10 Jamie's -- the work that she did?

11 A. No. She -- she did -- I think the
12 paperwork has substantially increased. And she
13 was exclusively doing paperwork for the
14 subcontracted \$500 a month fee that she was
15 charging.

16 Q. Okay.

17 A. I mean, she didn't do anything beyond
18 that. I handled all the families and all the
19 things that she used to do. That was not her job
20 anymore. Her job was really to just make sure
21 things got paid on time and -- and that we got
22 requests from the attorney general's office for
23 reviews of this case and reviews of that case,
24 submissions of data for data gatherers for the

1 government or private entities or whatever.

2 There's a lot of paperwork.

3 Q. All of those things, though, she or you
4 did before January 1st --

5 A. Yeah.

6 Q. -- 2014?

7 A. We did those together. But when she
8 was subcontracted, she pretty much took that
9 paperwork over and I did all the other stuff. So
10 we divided and conquered.

11 Q. You and I run over each other sometimes
12 and it's both our faults. I jump in before I let
13 you finish and you anticipate my question and
14 answer sometimes before I finish, so we'll try to
15 both slow down, okay?

16 A. Okay.

17 Q. Now, after July 1st, 2015 when she
18 became a coroner investigator again, did she
19 continue to do the same paperwork and phone work
20 that she had done January 1st, 2014 until July
21 1st, 2015?

22 A. We went back to the system that we had.

23 Q. Meaning you helping more?

24 A. Yes. Because she was helping take the

1 burden off of me on the other stuff.

2 Q. The other side being the
3 investigations?

4 A. Yes. So she would go to scenes again
5 and handle families and all the things. Her
6 duties changed significantly back to where they
7 were.

8 Q. I believe you as the elect -- appointed
9 and then elected coroner, you take an oath of
10 office each year, is that correct, or is it every
11 four years?

12 A. Every four years.

13 Q. Okay. I'll hand you what's marked as
14 -- and I put D.C. for David Cummin's Deposition.
15 It's Exhibit 1. Is that the latest oath of office
16 that you took, Dr. Cummin?

17 - - - - -

18 Thereupon, David Cummin Exhibit 1 is
19 marked for purposes of identification.

20 - - - - -

21 Q. Or it looks like that's a '12. I
22 thought it was -- it looks like the one in
23 December of 2012, which would have run through
24 December 2016. And you can see the timestamp up

1 here of December 31st, 2012.

2 A. What is your question?

3 Q. Is that the -- is that the oath of
4 office that you took December 31st, 2012?

5 A. Yes.

6 Q. And that oath of office includes the
7 statement that "I will discharge the duties of the
8 office of Hocking County Coroner with
9 fidelity...." Correct?

10 A. Yes.

11 Q. You have been a part-time coroner the
12 entire time you've been coroner?

13 A. I have been listed as a part-time
14 employee by the State of Ohio, yes.

15 Q. And as a part-time, that means you're
16 able to maintain a private practice, correct?

17 A. It -- no, it doesn't mean that at all.
18 That's not the definition of "part-time."

19 Q. Well, I guess --

20 A. Part-time is --

21 Q. I didn't mean it as a def -- the
22 definition.

23 A. I disagree with your statement.

24 Q. Okay. As a part-time coroner, you're

1 entitled to maintain a private office. If you was
2 a full-time coroner, you could not; is that a
3 correct statement?

4 A. That is false also.

5 Q. All right. Explain that to me then.

6 A. Because you are listed -- you do not
7 have the opportunity to be a full-time salaried
8 coroner unless you have a population of greater
9 than 175,001 people in your county.

10 Q. Okay.

11 A. And you can as a full-time coroner with
12 a population of one million, like the Franklin
13 County Coroner, still have a medical practice and
14 show up to work three days -- three half days a
15 week as done by Dr. Adrienne and -- and others
16 after him. Jan Gorniak was the first full-time
17 coroner of Franklin County that I had -- that I've
18 worked with. I've worked with four coroners.

19 Q. Okay.

20 A. So that is -- your statement's
21 incorrect.

22 Q. Okay.

23 A. Part-time coroner is listed
24 automatically whether you have a private practice

1 or not in populations less than 175.

2 Q. Okay.

3 A. That's the definition by the State of
4 Ohio.

5 Q. Okay. So then you are a part-time
6 coroner and maintain a private office, which
7 you're entitled --

8 A. I do.

9 Q. -- to do under the statute?

10 A. Yes. I don't have to or I can.

11 Q. I understand. That --

12 A. It's not listed under the statute that
13 I may or may not that I understand.

14 Q. That's the reason I said you're
15 entitled to do. You're permitted to do under the
16 statute.

17 A. I can have three jobs if I want, yes.

18 Q. How would you describe your duties and
19 responsibilities as coroner?

20 A. My job is death investigation. My job
21 is to evaluate whether a death is natural,
22 homicide, suicide, undetermined, accidental, could
23 not be determined, pending. Those are my boxes I
24 get to check.

1 The coroner is the only person that can
2 sign an unnatural death on the death certificate.
3 So a -- an attending physician can check a box on
4 the death certificate and put a natural death, but
5 they cannot sign an unnatural death. They can't
6 even sign a hip fracture if you die of hip
7 fracture complications. That is an accidental
8 death dated back to the hip fracture.

9 Q. Okay.

10 A. So there is a box on the death
11 certificate in the middle of the death certificate
12 and it says certifying physician, check, or a
13 coroner, check.

14 Q. All right. And I've seen in several
15 things I've read that the determination of death
16 mean -- regarding the manner or mode and cause of
17 death. Is that the area that you as the coroner
18 determines?

19 A. It's an extensive -- however I want to
20 get to those is how the law is written.

21 Q. I didn't understand that.

22 A. However I want to get to mode, manner
23 and mean, cause, and manner of death is -- is not
24 restricted by Ohio Revised Code.

1 Q. And it's not part of your duties to
2 determine who caused the death?

3 A. It is not my determination to place
4 blame.

5 Q. Okay.

6 A. That is the correct terminology. I can
7 determine who all I want, but I can't place blame.
8 Big difference.

9 - - - - -

10 Thereupon, David Cummin Exhibit 3 is
11 marked for purposes of identification.

12 - - - - -

13 Q. I'll show you what's marked as
14 Exhibit 3, Doctor. These are just some coroner
15 statutes that I'd like to look at with you
16 briefly. Let me see the one you have and make
17 sure I gave you the right one.

18 Okay. It would be -- it would appear
19 to me that under the first section, page 1 there,
20 313.04, if you are going to be temporarily absent
21 from the county, you may appoint a person with
22 necessary qualifications to act as coroner,
23 correct?

24 A. Yes. It says "may."

1 Q. Okay.

2 A. Not "shall."

3 Q. I didn't ask you if it said shall. I
4 said it says you "may," correct?

5 A. It says "may."

6 Q. Okay. And page 2, 313.02 places the
7 eligibility for the office of coroner to be a
8 physician with at least two years of practice
9 preceding the appointment as coroner and in good
10 standing in the person's profession. Is that your
11 understanding of the qualifications for someone
12 that you could appoint as coroner in your absence?

13 A. It is. It doesn't say -- okay. That's
14 incorrect. You -- you said I can appoint
15 somebody. I can't -- I don't have that authority
16 to appoint. That's up to the -- the party,
17 democrat or Republican Party.

18 Q. I'm not talking about a vacancy in your
19 position.

20 A. I heard you say --

21 Q. You're correct -- you're correct --

22 A. I heard you say appoint.

23 Q. Well, it says -- let's go back to
24 313.04. I don't mean -- none of this is to try to

1 trick you. Go back to page 1.

2 A. I understand. But your statement if
3 you read it back was I have the ability to
4 appoint. That's not how that works.

5 Q. Well, let's look at the statute here.
6 "When the coroner is absent temporarily from the
7 county...." and some other situations here that
8 doesn't apply, down to the next-to-the-last
9 sentence, "...such coroner may appoint a person
10 with the necessary qualifications to act as
11 coroner during such absence...." Do you see that?
12 You were not aware that you could do that?

13 A. Oh, no, I can do that.

14 Q. Okay.

15 A. But I can't appoint a coroner. I can
16 appoint somebody --

17 Q. To act --

18 A. -- to act as a coroner.

19 Q. Yeah. Yeah. If I read that wrong, I'm
20 sorry.

21 A. Okay.

22 Q. But I thought I read that verbatim, but
23 I may have messed it up.

24 A. Okay.

1 Q. We just may have had a little
2 miscommunication.

3 All right. Are we together now?

4 A. Yes.

5 Q. All right. 313.06, page 3, or the next
6 section there states "The coroner, his deputy, and
7 assistants shall be available at all times for the
8 performance of their duties...." Correct?

9 A. That's what it says, yes.

10 Q. Then 313.09, part of the duties is to
11 keep a complete record of and file the cause of
12 death from the death certificate in all cases that
13 come under your jurisdiction. That's something
14 that you do in all cases, correct?

15 A. Correct.

16 Q. Okay. It says, "All records shall be
17 kept in the office of coroner...." Where -- where
18 are your records kept, Doctor?

19 A. They're in my office.

20 Q. "Your office" meaning your private
21 office?

22 A. Some are kept there. Some are kept in
23 a storage place in the Hulls Building. They kind
24 of shuffle between places.

1 Q. Okay. You have an office or room in
2 the Hulls Building where you keep files I
3 understand.

4 A. We -- we have -- it's not secure. We
5 can't keep anything secure there. People have
6 gotten into our rooms, things have disappeared,
7 there's foot marks all over my desk, people have
8 to been -- I don't know what they doing in there.
9 We have a padlock where we keep some of our
10 records and that's where I pretty much shuttle in
11 between the two places. It's more of a storage
12 place, but I would not place anything valuable or
13 that I don't want to disappear in there.

14 Q. Now, the statute goes on to say "if no
15 such office is maintained, then such records shall
16 be kept in the office of clerk of courts." Do you
17 keep records at the clerk of courts or just in
18 your office and the coroner office --

19 A. It says --

20 Q. -- in the Hulls Building?

21 A. -- if no such office is maintained. An
22 office is maintained.

23 Q. Okay.

24 A. So that's not applicable.

1 Q. Well, my question was: Do you keep any
2 records in the clerk of courts?

3 A. I believe there may be very old records
4 there but nothing since I've been coroner.

5 Q. Okay.

6 A. The problem is is records disappear
7 there and they never get returned. It seems to be
8 a free-for-all. There's no control of the
9 records.

10 Q. Okay. Next section is 313.15,
11 Determination of responsibility for death. Now,
12 that statute provides that "All dead bodies in the
13 custody of the coroner shall be held until such
14 time as the coroner, after consultation with the"
15 prosecutor or the police department in a
16 municipality or otherwise the sheriff has decided
17 that it is no longer necessary to hold the body to
18 enable him to decide on a diagnosis giving a
19 reasonable and true cause of death. Is that your
20 understanding that the bodies will be maintained
21 until there has been a consultation with the
22 prosecutor or either the chief of police or the
23 sheriff?

24 A. I believe that's been substituted with

1 the protocol.

2 Q. The protocol that we'll get in to here
3 later, you believe?

4 A. It addresses that.

5 Q. Okay.

6 A. And this is a statute that was written
7 in 1953.

8 Q. Uh-huh.

9 A. And since then, coroners' offices like
10 Franklin County will have a homicide victim; they
11 are required by statute to keep all records. And
12 we don't -- when we're done with bodies, we don't
13 just stack them and wait to release them. They're
14 automatically -- at least in Franklin County, they
15 don't call -- is it Mr. O'Brien? I don't know who
16 the prosecutor is. They don't call him and say
17 can we release a body. It's automatic. Because
18 by statute the coroner, the morgue duties somewhat
19 supersede this in that they are required to keep
20 this by five years and slides of this by that and
21 they're -- all the evidence is maintained.
22 There's no benefit of keeping a carcass, which is
23 the leftover after investigatory slides and photos
24 and DNA slides and all the things that are done.

1 So in general this is not something that is the
2 standard in Ohio. Even though it's written in
3 1953, I think if you went through the morgue and
4 their requirements on homicide victims, that
5 somewhat supersedes this. But we had to address
6 it, even though I think Hocking County would be
7 the only county I know of that would actually
8 consult after an autopsy whether you could release
9 the carcass or not.

10 Q. Now, how is -- how has the protocol
11 expanded on this?

12 A. It eased it. So I had to notify one.

13 Q. Pardon?

14 A. It is said I had to notify one. It
15 eased it.

16 Q. Okay.

17 A. And this is from Mr. Warren. So the
18 burden is -- and it doesn't say I have to ask for
19 permission or consult. It says I have to notify.

20 Q. It says notify --

21 A. That's what he says.

22 Q. Notify either?

23 A. That's what -- yes, that's what he
24 says.

1 Q. And that's what the protocol says?

2 A. That's what he says the protocol
3 interprets it.

4 Q. Who's "he"?

5 A. Warren. Dr. -- or Dave Warren.

6 Q. Okay. And what do you mean "that's
7 what he says"? I believe --

8 A. It --

9 Q. Is he saying something different than
10 the protocol?

11 A. He negotiated the contract for them and
12 he said that that's what it is. And it's -- there
13 is a letter or something, an e-mail or something
14 like that which is referenced and it says I have
15 to notify one or the other. And I think there is
16 an argument that goes on in whatever the discovery
17 documents are, and it's pretty much -- and I think
18 it was even in a deposition of what it means.

19 Q. Okay. So you're saying he explained
20 that as the interpretation of the protocol, that's
21 what's in the protocol means?

22 A. That's -- that's how we have followed
23 it.

24 Q. Okay.

1 A. We have notified and we have notified
2 through an e-mail to Lanny North that the body has
3 been released.

4 Q. That it has been or that it's going to
5 be?

6 A. That it's going to be.

7 Q. Okay.

8 A. Or has. I mean I don't know exactly.
9 When we send a body, the first thing they ask is
10 can we release it afterwards and we say yes. And
11 then when the autopsy's over, I send the e-mail or
12 Jamie sends the e-mail.

13 Q. Okay. It appears the last sentence of
14 the statute provides that the consultation, or at
15 least the -- in this case notice, that before it's
16 to be released is to be sure that maintaining the
17 body is no longer necessary to assist any of the
18 other officials in their duties.

19 A. That is --

20 Q. What the old law --

21 A. -- what I described about those statute
22 for the county morgues that keep homicide victims.

23 Q. Okay.

24 A. And maintain evidence on homicides.

1 Q. But if -- if there's notice given that
2 it has been released or going to be released, the
3 -- if there was a request or a need that the body
4 be maintained, if they're not notified until after
5 -- until after it's released, then that wouldn't
6 be effective, would it?

7 A. What is your question?

8 Q. I'm saying that that last part of that
9 statute that gives the other law enforcement
10 authorities the ability to ask that it be
11 maintained if for some reason they believe it
12 would assist them in their investigation or their
13 prosecution, they would have the ability to do
14 that if they're not notified until after its
15 released?

16 A. You'll have to simplify your question.
17 It seems -- what is your question exactly?

18 Q. I'm not sure what you don't understand.
19 I'm just -- my point was that the last
20 part of that sentence appears to give the other --
21 these other law enforcement officials the
22 opportunity to ask that the body be maintained if
23 they believe there's a reason that -- that the
24 retaining of the body would assist them in their

1 duties.

2 A. If they believe that they think it
3 should be retained to assist them, then they
4 should notify me and let me know to make sure it
5 doesn't get released.

6 Q. Okay.

7 A. Just as if I have Glenn Swaim, they
8 will only maintain his urine and blood for six
9 months unless I specifically ask them to maintain
10 it longer, which I did preemptively. So there are
11 certain -- you know, we would have to work
12 together. If there is something that they're
13 concerned about, they should notify me and, say,
14 hey, we have a questions; otherwise, in general
15 100 percent of bodies are released to the
16 families. And once the death certificate is
17 signed, I have lost control of that body. I don't
18 maintain jurisdiction over the body. If -- if the
19 family cremates it, I don't have that ability as
20 to my understanding under law that I -- the only
21 thing when I sign a death certificate does it --
22 I've lost control of the body.

23 Q. Is there -- now, is that a statute or a
24 regulation that tells you that or --

1 A. We run into this with indigent deaths.

2 Q. Uh-huh.

3 A. In that once the trustees have done all
4 their paperwork and they've submitted it to a
5 funeral home and they're in charge of an indigent
6 burial, 100 percent of the time that I know of,
7 whether it's Hocking County or Franklin County,
8 they're cremated because of expense, and the
9 coroner does not have the ability to prevent that.
10 Because once the death certificate's signed, we
11 have lost control of the body. That is what I was
12 told through I believe either our prosecutor or
13 Ohio State Coroner Association, but that's how
14 it's been practiced. I can't tell the trustees
15 save it for a second autopsy.

16 Q. Okay.

17 A. I don't have that authority anymore.
18 I've lost it.

19 Q. The next section deals with disposition
20 of firearms. It provides that -- it would appear
21 to me that firearms that come into your control or
22 custody would be turned over -- are turned over to
23 law enforcement once they're no longer necessary
24 for you to retain them; is that correct?

1 A. That is correct.

2 Q. Is that something you always do?

3 A. Yes. We try to. There -- it's been
4 refused for example in the past. This past Sunday
5 the .50 caliber handgun from a suicide was
6 refused.

7 Q. Who was it refused by?

8 A. By Detective Shyree. He said it was my
9 gun and it was my -- he didn't want it. That's
10 fine. I mean I have no problem with that. We
11 maintain a secure place for it. It's not a big
12 deal.

13 Q. Then the next section deals with the
14 ability to issue subpoenas. These would basically
15 be often for inquest, right? You hold inquests
16 from time to time to help determine the manner or
17 cause of death? Is that correct?

18 A. It's -- I don't think it's necessary
19 for --

20 Q. I did not mean it was necessarily for
21 that. Let me back up. You can issue subpoenas --

22 A. I can perform inquests and I can issue
23 subpoenas. The -- there is a quasi juris -- you
24 know, there's a --

1 Q. Quasi judicial?

2 A. Yes. Quasi judicial power that the
3 coroner has that other elected officials don't
4 have to issue subpoenas. Yes, it can be a
5 subpoena duces tecum, it can be a subpoena to
6 appear to testify, it can be all kinds of -- you
7 know, we've utilized that.

8 Q. And that's in order for you to inquire
9 how the deceased came to his death basically?

10 A. Yes. It is for that among whatever I
11 need to -- if I'm not getting the answers that I
12 need, then we would perhaps use a subpoena if
13 they're not willing to discuss how somebody came
14 to their death or there are concerns that they
15 won't come forward with or their inability to give
16 me information because somebody says they're not
17 allowed to, whatever.

18 Q. But it's -- the purpose, ultimate
19 purpose there that the subpoena would be used for
20 would inquire how the deceased came to his death,
21 correct, there in the second line?

22 A. I don't think it exclusively says for
23 only that purpose. Do you see where it says only
24 for that purpose?

1 Q. No.

2 A. Me neither.

3 Q. It does not.

4 But other than the -- helping you
5 determine how someone came to their death, what do
6 you believe the other purpose or ability to use a
7 subpoena is -- is available to you?

8 A. I think I've already answered that
9 previously. You can read it back.

10 Q. Well, it was my understanding what I
11 what you answered previously all went to the
12 ultimate determination of how someone came to
13 their death.

14 A. You can ask the court reporter to read
15 back what my previous answer was.

16 MR. LAMBERT: Okay. Would you read it
17 back for us.

18 (The record is read as follows: The
19 question is: "And that's in order for you to
20 inquire how the deceased came to his death
21 basically?" The answer is: "Yes. It is for that
22 among whatever I need to -- if I'm not getting the
23 answers that I need, then we would perhaps use a
24 subpoena if they're not willing to discuss how

1 somebody came to their death or there are concerns
2 that they won't come forward with or their
3 inability to give me information because somebody
4 says they're not allowed to, whatever.")

5 A. I'll stick with that answer.

6 Q. Well, there were a lot of -- there were
7 a lot of generalities that -- in that answer,
8 Doctor. What I'm trying to figure out is if you
9 believe the subpoena can be used for anything
10 other than to assist you in ultimately determining
11 how the deceased came to his death?

12 A. I think I've answered that question.
13 We can read it again.

14 Q. Okay.

15 MR. BARBIERE: That's not proper.
16 You're entitled to an answer to your question. I
17 agree with Randy. I don't think you've answered
18 that question. And I don't think you can tell him
19 that you're not going to answer unless your --

20 THE WITNESS: I've already answered it.

21 MR. BARBIERE: If your attorney
22 instructs you not to answer, that's one thing.

23 MR. BRUNNER: Objection. It's been
24 asked and answered.

1 Q. Let me state it a different way,
2 Doctor. I don't want to get into a battle with
3 you.

4 MR. BRUNNER: That's probably --

5 Q. I'm trying -- I'm just trying to get
6 some information.

7 I interpret the answer that she just
8 read back as being ways to help you determine how
9 the deceased came to his death, and you've stated
10 that even in the answer. Do you believe there's
11 any other purpose other than how the deceased came
12 to his death as you described in your previous
13 answer that the subpoena can be used for?

14 A. Yes. I think it can be not only how
15 they came to their death, but the circumstances
16 around it before and afterwards. Perhaps if there
17 is improper collection of evidence and then I
18 can't find out what that improper evidence was,
19 then I could ask questions on how that was done
20 because it's -- they determine how I rule the
21 case. But it's not just cause and manner of
22 death. It may be the circumstances around it
23 which may influence whether it's an accident or a
24 suicide or things like that.

1 Q. You believe you have subpoena power
2 after you have determined the cause and manner of
3 death?

4 A. Absolutely.

5 Q. And what would the purpose of that be?

6 A. Because I can change it at my
7 convenience if I find new evidence. There is no
8 statute that says that I stop investigating after
9 I've signed a death certificate. And I can
10 certainly change it without anybody's authority to
11 do so.

12 Q. Okay.

13 A. For years later if necessary. And I've
14 done that.

15 Q. Okay. Doctor, 313.23 provides that the
16 coroner may allow an interested person, which has
17 been -- can be defined as a law enforcement
18 agency, to view an autopsy. Do you agree with
19 that?

20 A. What is your question?

21 Q. The coroner may allow an interested
22 person to view an autopsy?

23 A. "May" is the proper term, yes.

24 Q. Yes. Is there any reason why you would

1 think that permission should not be granted to a
2 law enforcement agency if they asked to view the
3 autopsy?

4 A. I think if you are Detective Downs or
5 Detective Valkinburg and you're secretly recording
6 a pathologist and Jan Gorniak says you're never
7 allowed to come back in her office again, I think
8 that's her discretion. I don't think that they
9 have any expertise medically to help be there at
10 an autopsy.

11 Q. Other than personal reasons, as you
12 described --

13 A. Personal interest, maybe.

14 Q. Other than personal reasons as you
15 described, can you -- is there any reason why law
16 enforcement you believe should not be entitled to
17 view an autopsy if they ask to do so?

18 A. It's not within their power. It
19 says "may."

20 Q. I understand.

21 A. You asked entitled, right?

22 Q. No. I asked if they asked you to view
23 an autopsy or asked a coroner in general to view
24 an autopsy, can you think of a reason other than

1 some personal background that you -- as you
2 described that a law enforcement agency should not
3 be permitted to view an autopsy?

4 A. I think I've described one instance, if
5 they be kicked out because of their --

6 Q. I understand that.

7 A. -- behavior.

8 Q. I'm just -- other than some personal
9 thing like that, is there any other reason why?

10 A. I've not had a problem with other
11 people going there, but that's also not -- also --
12 there is another say that can be the pathologist
13 besides myself. I can't go and twist the arm of
14 Jan Gorniak and say I really, really want somebody
15 to see it and tell her to go against her
16 principles.

17 Q. Have you ever told the Franklin County
18 Coroner's Office you did not want a law
19 enforcement member or agency viewing an autopsy?

20 A. I don't remember.

21 Q. Okay. I'll show you what's marked as
22 Exhibit 2.

23 - - - - -

24 Thereupon, David Cummin Exhibit 2 is

1 marked for purposes of identification.

2 - - - - -

3 Q. Basically that's a copy of the lawsuit
4 that was filed on your behalf in the case that
5 we're here in, Doctor. Would you agree with that
6 or do you need a minute to look at it?

7 (A discussion is held off record.)

8 Q. Do you agree that's a copy of the --

9 A. No.

10 Q. -- complaint that you --

11 Okay. Can you tell me why you don't
12 agree then? Did somebody copy it wrong or what?

13 A. The last page says Notice to Withdraw
14 Counsel.

15 Q. Well, somebody did copy it wrong.
16 Let's take a last page off of there.

17 A. Then I agree it's correct.

18 Q. That'll be -- we'll consider that an
19 Angel-ism.

20 MR. BRUNNER: I object to that
21 statement.

22 Q. And what we'll have to do at some
23 point, keep these -- keep the exhibits together.
24 But Exhibit 3 there we're going to be using from

1 time to time -- or Exhibit 2 I mean during the
2 day, so if you want to just keep the other ones
3 here -- here, yeah, we'll put them over here.
4 That one there, just keep it there because we'll
5 be referring to it.

6 Would you agree, Doctor, that over the
7 past few years there has been some conflict or
8 controversy at times between you and the sheriff's
9 office or employees of the sheriff's office?

10 A. Define "conflict."

11 Q. Well, disagreement or confrontation?

12 A. Regarding what?

13 Q. A variety of things I guess I would
14 say. Just -- if you don't agree with that, then
15 we can move on.

16 Regarding some of those issues that I
17 was referring to in the past, do you remember in
18 2009, Doctor, the investigation of the death of
19 Sherri Davis on Bailor Road in Laurelville? Does
20 that name ring a bell?

21 A. You'll have to give me the file on it
22 to -- so I can understand what you're --

23 Q. Well --

24 A. If I remember or not.

1 Q. Well, in that -- it's my understanding
2 as a result of that investigation, you held an
3 inquest and subpoenaed all the officers from
4 what -- where you appeared to be upset over the
5 way you were notified. Does that help refresh
6 your memory?

7 A. Yeah. I believe I was notified eight
8 hours after the death.

9 Q. Okay.

10 A. BCI was already processing the scene.

11 Q. And --

12 A. And I got there and the scene was
13 already being processed, yes.

14 Q. Okay. And as a result you subpoenaed I
15 think seven or eight officers to an inquest and
16 had them read Section 313.12 of the Ohio Revised
17 Code out loud regarding the notification to the
18 Coroner?

19 A. I don't remember.

20 Q. Okay.

21 A. But I do remember that I did not record
22 Lanny North when he told me he purposely didn't
23 call me for eight hours and it was his fault and I
24 let him go.

1 MR. TEETOR: Excuse me a minute. Could
2 I ask that -- if you wouldn't mind keeping your
3 voice up. I'm having trouble hearing you. And
4 the court reporter is leaning forward. You're
5 speaking very softly and we all need to hear.
6 Thank you.

7 Q. Something we all have a tendency to do,
8 you and I are conversing back and forth but we
9 have a large room; we have a -- the fan going. So
10 we'll probably both have to speak up, okay?

11 MR. BARBIERE: As a matter of fact, I
12 didn't hear the last answer either. Would you
13 mind reading it back?

14 MR. TEETOR: I couldn't hear it either.

15 (The record is read as follows: But I
16 do remember that I did not record Lanny North when
17 he told me he purposely didn't call me for eight
18 hours and it was his fault and I let him go.)

19 A. That should really say I let it go.

20 Q. Now, I believe you were out of town at
21 that time and Mike Downhour was the investigator
22 that appeared on that scene. Do you recall that?

23 A. No. I don't recall that.

24 MR. TEETOR: I'm sorry. What did you

1 say?

2 A. No. I do not recall that.

3 Q. Would you agree that having the
4 officers read Section 313.12 of the Ohio Revised
5 Code out loud did not have anything to do with you
6 determining the cause or manner of the death of
7 Ms. Davis?

8 A. It did not.

9 Q. And you'll recall in that -- in that
10 case the suspect was hospitalized and you went to
11 the hospital and interviewed the suspect?

12 A. No. I don't recall that.

13 Q. Okay. Do you recall there being times
14 when prior to this protocol being developed that
15 your investigators were wait -- asked to wait
16 before they go into the scene until BCI gets there
17 and a search warrant is obtained and there being
18 some controversy about that?

19 A. There were three instances where we
20 were called to three death scenes, and at one we
21 -- I was not permitted to go in. And I believe --
22 I can't remember which one, but Laney North I
23 think was screaming at me that he is the sheriff
24 and he is in charge of the scene. Then there was

1 another one where David Valkinburg said: I am in
2 charge of the scene and you can't go in. And then
3 the third one was when Seth Riddlebarger was out
4 there and he couldn't go into the scene. And then
5 I had Mike Downhour and Mike Stephenson at one of
6 those three scenes, and they were told if they
7 went inside they would be arrested. And that was
8 what prompted the three denials in six weeks of
9 going into a death scene, of which there was no
10 jurisdiction for the sheriff's department. Two
11 were natural deaths and one was an overdose. They
12 had no jurisdiction on any of those three deaths.
13 None. Yet they denied access by the coroner to
14 the scene to evaluate if it was even a suspicious
15 death. And that's why that was started with the
16 protocol. It was to be able to get us access
17 because the prosecutor in our town would not
18 follow the Ohio Revised Code and let the coroner
19 or his investigators in the scene to evaluate it.
20 That is what really happened. Denied three times
21 in six weeks on two natural deaths and one overdose. No
22 jurisdiction does the sheriff's department have
23 over any of those deaths or the scene itself. It
24 was illegal.

1 Q. When you say "the scene," it's my
2 understanding the coroner is in charge of the body
3 and the area directly around the body?

4 A. Defined "directly around the body."
5 Because Anthony Celebreeze defined it if you want
6 to look up his opinion which followed the opinion
7 piece of an Ashtabula case. It's as big as the
8 coroner wants it to be. That's the AG's opinion.
9 You can look up Anthony Celebreeze for that
10 opinion.

11 Q. Is that the 1988 opinion?

12 A. It is.

13 MR. TEETOR: Excuse me. I cannot hear
14 you. I'm sorry. Would you mind keeping your
15 voice up?

16 MR. LAMBERT: Can you hear me or --

17 MR. TEETOR: Yeah.

18 MR. LAMBERT: Okay.

19 MR. TEETOR: I can't hear the witness's
20 answer. Nobody down here can, but I understand.

21 MR. BRUNNER: My guess is, too, is that
22 some of it, it goes up, so you do have to raise
23 your voice for down there.

24 Q. Okay. You mentioned Glenn Swaim. I

1 think Glenn -- Glenn Swaim has been a source of
2 some conflict or disagreement between you and the
3 Sheriff's Office, correct?

4 A. Correct.

5 Q. And I believe that occurred in June --
6 June the 9th of 2011 was his death?

7 A. It did.

8 Q. And he lived on Shaw Road?

9 A. I don't know.

10 Q. Okay. Do you recall if the first
11 indication you give to the Sheriff's Office as to
12 your ruling or what you would likely rule in the
13 case was in September when you approached Captain
14 Alford at the county fair?

15 A. What's the question?

16 Q. It's my understanding -- I'll rephrase
17 it.

18 It's my understanding that the first
19 indication you give to the Sheriff's Office
20 regarding your ruling or probable ruling was you
21 told Captain Alford at the county fair that it was
22 probably going to be ruled a homicide -- a
23 homicide that was in September, does that sound
24 right?

1 A. September 12th, I believe, 2011.

2 Q. And the official ruling on the death
3 certificate was dated --

4 A. Actually, it was September 14th. I'm
5 sorry. September 14th.

6 Q. And the actual death certificate was
7 signed in December, I believe December 13th?

8 A. Correct. Would you like me to explain?

9 Q. Sure.

10 A. Okay. Glenn Swaim was found in a drug
11 trailer in the woods. He was brought into the
12 emergency room deceased or I think they may have
13 coded him on a Thursday morning or so. That would
14 have been June 9th, 2011. I was seeing patients.
15 I sent Jamie Walsh, my investigator, over to the
16 emergency room, and she took notes and then she
17 filled out the -- the sheet for an autopsy request
18 and then she came back to the office. I never saw
19 Glenn Swaim.

20 I got called on September 12th by
21 Dr. Ugwu, and he said that it was a death as a
22 result of blunt force trauma, that he had a
23 lacerated liver and that he had -- I'm trying to
24 remember if it was 1,200 ccs of blood in his

1 belly; he bled to death and it probably took one
2 to three hours. He had reviewed it with his
3 peers. They have a weekly meeting where they
4 review certain cases. The microscopic slides that
5 he saw showed early healing. He estimated that he
6 lived one to three hours and that he wanted me to
7 know.

8 I -- the county fair was going on that
9 week. I thought I might see Lanny North at the
10 fair. I didn't see him, but I felt it was
11 important enough and I found an officer with rank,
12 Jerrod Alford, and I told him that it was a
13 concern that it was going to be ruled -- I did not
14 have the autopsy report yet. It came maybe three
15 days later. He said -- he -- he apparently
16 notified Lanny North that evening. And then
17 September -- so that was September 14th.

18 On September 28th, Kaleb Mortiz, who
19 was originally on the case, was removed.
20 Detective Downs had taken over the case. And he
21 showed up two weeks after notification that it was
22 a homicide to pick up the autopsy report on
23 September 28th.

24 December 15th, 2011, the family

1 notified me after I'd told them that he died of an
2 over -- that he died of a blunt force trauma that
3 the sheriff's department had told them that he
4 died of an overdose and that they had switched the
5 blood samples, the Franklin County Coroner's
6 Office, as a mistake. There was no drugs in his
7 system. He was clean for three weeks before his
8 death.

9 So they told me that the case was
10 closed, the sheriff's department was not returning
11 any of their calls and the prosecutor wasn't
12 returning any calls. And on September 28th when I
13 saw Dr. -- Detective Downs, I told him that I
14 would not release the cause of death to give him
15 the time necessary to investigate it. So when the
16 family called me and told me December 15th that
17 they had created a fictitious cause of death which
18 was inaccurate, then I told them I'd release it to
19 the newspaper. So December 17th, I showed up on
20 the newspaper that I declared it a homicide. And
21 then on the 19th it was signed.

22 On the 27th, David Valkinburg called me
23 and asked me if I had a copy of the autopsy
24 report, three months after I'd already given it to

1 Detective Downs. David Valkinburg was the head of
2 the detective bureau of two detectives. Why he
3 did not have that autopsy is beyond me. So we
4 sent Mike Downhour with a second copy that day and
5 gave him a copy of that. So apparently for three
6 months the head of the detective bureau didn't
7 know that the lead detective had the autopsy
8 report, after he told the family a complete lie.
9 That's --

10 Q. Did you --

11 A. -- why I took that long.

12 Q. Did you talk to Detective Downs and ask
13 if he had told the family that?

14 A. He refused to talk to me.

15 Q. What --

16 A. He refused to turn anything over to me.
17 I sent Mike Downhour on January 3rd, 2012 there to
18 get a copy of the report. It was the same
19 four-sentence report that I got on the September
20 28th when Detective Downs brought the same report
21 to me. I asked for the report, he refused to give
22 it to me, and now you can see where we got. I got
23 a family being lied to --

24 Q. Who --

1 A. -- I got --

2 Q. Who -- who refused to give it?

3 A. Detective Downs.

4 Q. You say Detective Downs --

5 A. Absolutely.

6 Q. -- refused to give you the report?

7 A. No. He gave me the same four-sentence
8 report that I got on September 28th. I found out
9 two years later that Glenn Swaim was a
10 confidential informant.

11 Q. How did you find that out?

12 A. I had heard through law enforcement and
13 I asked who signed him as confidential informant
14 and it was Culbertson.

15 Q. With Logan?

16 A. Yeah.

17 Q. Logan PD?

18 A. And he signed him -- he told me in a
19 90-minute interview with him that he had no idea
20 that he died -- he thought he died of an overdose.
21 He had no idea he died of blunt force trauma. He
22 signed him and he told me that it was detective or
23 it was with -- I don't know if he's a detective or
24 what his rank is. Cluely. Cluely is also --

1 Q. Can you spell that for the --

2 A. C-L-U-L-E-Y. He is also the lone
3 investigator for Laina Fetherolf, the prosecutor.
4 He's the prosecutor investigator. He is
5 by-the-book, straight-as-an-arrow guy. And if he
6 signed somebody as a confidential informant three
7 weeks -- three weeks before their death, there's
8 no way he wouldn't have told his boss. And I
9 would think that if your confidential informant
10 was killed three weeks after you signed him and
11 you're the prosecutor, you would actually call the
12 coroner and say what happened to my CI? That's
13 why I believe there's something wrong here.

14 Q. But you're saying this is all --

15 A. He didn't have any drugs in his system
16 because I'm sure that was in his agreement. It
17 was also, if you look at Jamie Walsh's notes which
18 are in the other room, her original notes from
19 that day June 9th, 2011, that Megan Swaim said he
20 had been clean for three weeks. He was the driver
21 in a burglary ring and he didn't want to go to
22 jail again, so he signed a confidential agreement
23 -- confidential informant agreement to give up the
24 two guys that he was doing it with. And then

1 three weeks later he mysteriously gets killed and
2 it's covered up. That's what the Swaim problem
3 is. And when I have a prosecutor and a sheriff
4 who are in the same page together, I can't fix the
5 problem.

6 Q. Did you go to the sheriff or
7 prosecutor, either one, and talk to them about
8 this?

9 A. They already told that the case was
10 over.

11 Q. Did you go to them and talk to -- to
12 them about the Swaim case?

13 A. Yes. I talked to Laina Fetherolf in
14 September -- in November. Now, remember, I
15 declared it a homicide in September 14th. Downs
16 picks up the autopsy, gives me the four-sentence
17 report September 28th. And then I am guessing it
18 was around November 17th Laina Fetherolf was in my
19 office, and I can't violate HIPAA to say why she
20 was there, but she was there. And I informed her
21 that Glenn Swaim was killed, not knowing that he
22 was a CI at the time. And she had no idea
23 anything about it. Almost two months after -- oh,
24 over two months after I declared it. I believe

1 Detective Downs may have even been on paternity
2 leave for a couple months at that time, but I
3 don't know that to be true.

4 Q. Now, when you say you had declared it,
5 what did you tell Captain Alford back in
6 September?

7 A. I said he was killed by blunt force
8 trauma, it was a homicide, and that I was going to
9 rule it a homicide, and that he needed to tell his
10 boss. And he did so that evening. He called him
11 at home I believe.

12 Q. And who did you tell that you were
13 going to hold the death certificate for for them
14 to do the investigation?

15 A. Detective Downs on September 28th,
16 which apparently he didn't tell anybody.

17 Q. I'm sorry. I didn't catch that.

18 A. Apparently he didn't tell anybody.

19 Q. Okay.

20 A. His boss or the prosecutor or anybody.
21 And then the lie to the family about the overdose
22 which was completely false.

23 I did bring his file if you want to
24 review it.

1 Q. Pardon?

2 A. I brought his file if you'd like to
3 review what I say to be true.

4 Q. Okay. We can take a break and we
5 can -- we can re -- we can look at that.

6 Now, after you had ruled on the cause
7 and manner of death in December of 2011,
8 approximately six months after the death you then
9 held an inquest in January 2012?

10 A. That is correct.

11 Q. And why was that?

12 A. Because Detective Downs and the
13 sheriff's department wouldn't turn any information
14 they had over, because apparently they must have
15 had additional evidence that I didn't have because
16 they kept telling everybody it was an overdose.

17 Q. When you say "kept telling everybody"?

18 A. The family. They called my office
19 again in January and they wanted something done.
20 And I'm talking Krystal Jones and Dewayne Jones.

21 Q. I have what's marked as Exhibit 9.

22 - - - - -

23 Thereupon, David Cummin Exhibit 9 is
24 marked for purposes of identification.

1	—	—	—	—	—
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2 Q. This would have been the -- I guess the
3 preliminary death certificate that says the cause
4 is "Pending"; is that correct?

5 A. Yes, it is. Would you like to know why
6 it says "Pending"?

7 Q. I -- well, I assumed I knew but go
8 ahead and -- go ahead and explain.

9 A. This is the burial certificate. And if
10 I -- I have -- as long as I put pending, the
11 decedent can be buried or cremated or anything.

12	0.	Okay.
----	----	-------

13 A. That's the purpose of the pending when
14 you see that.

15 Q. Okay. You had told us the -- the
16 investigation that I thought was pending, but
17 that's fine. I understand that's a better --
18 that's an explanation.

19 Exhibit 10 then is the final death
20 certificate as I understand?

21 - - - - -

22 Thereupon, David Cummin Exhibit 10 is
23 marked for purposes of identification.

24 — — — — —

1 A. Yes.

2 Q. Which includes the blunt -- the cause
3 of death and then the manner of death I guess as
4 the blunt impact to the torso?

5 A. Correct.

6 Q. It says "Presumed physical
7 altercation." That, again, presume speaks for
8 itself there. There was no evidence of there
9 actually being a physical altercation, so that's
10 the reason you put it presumed?

11 A. Exactly.

12 Q. Now, before you release -- signed the
13 death certificate and released it to the press,
14 did you notify the Sheriff's Office you was going
15 to do so?

16 A. No.

17 Q. Now at what point was the body
18 released?

19 A. It was released the day after the
20 autopsy.

21 Q. I don't know if you told us that.
22 Now --

23 A. I don't -- I'd have to look at the date
24 of the autopsy.

1 Q. Now, you indicated the autopsy report
2 was 7 -- was September 14. Had the autopsy been
3 performed a long time before that --

4 A. Yes.

5 Q. -- and then you just got the report?

6 A. Yes. But autopsies are not necessarily
7 done the same day. They could be done three to
8 four days later. It depends on the workload,
9 especially if it's on the weekend. At the time I
10 believe they had two -- they had maybe one
11 pathologist, maybe two that would come in on the
12 weekends, and they might do three autopsies a
13 piece. But if they had eight deaths the night
14 before, then two -- and they would always do
15 Columbus autopsies before out-of-county ones. And
16 so it's not unusual for us to get an autopsy three
17 to four days later, which isn't a problem. So
18 they -- we know we're on the back burner but
19 that's okay.

20 Q. But he had -- the autopsy apparently
21 was within two or three days of June the 9th, I
22 assume?

23 A. The -- if we look at the file, we could
24 tell. I don't know what day it was done.

1 Q. Okay.

2 A. It could have been done same day he was
3 sent; it could have been done one or two days
4 later. I don't know.

5 Q. You wouldn't expect it to be more than
6 two or three days later?

7 A. I don't know.

8 Q. Okay.

9 A. I mean, it could -- it could be three,
10 four days later. I don't know.

11 Q. Okay.

12 A. I'd have to look at the sheet.

13 Q. Dr. Ugwu had called you September 12th
14 is what I'm trying to get at.

15 A. Yes.

16 Q. Was that an unusual amount of time
17 between the autopsy and communicating with you?

18 A. Well, I don't know what he thought. I
19 don't know what he was thinking at the time. You
20 know, he had created a -- an -- he created a
21 report in which he mentioned CPR, and I think what
22 he did was he -- and I asked him this, I said did
23 you -- well, he volunteered it. He told me
24 eventually he had sent me an autopsy report that

1 was not accurate. And I read it, and luckily I
2 read the entire details of it. It said that he
3 had possible signs of CPR. And I went, whoa,
4 where did that come from? So I called him up and
5 I said that's not consistent with your -- you told
6 me blunt force trauma and he lived one to three
7 hours. And he said, oh, my, gosh, I had dictated
8 that right afterwards, and then when we went
9 through the process and I changed my opinion, I
10 forgot to delete that.

11 Q. So the report after he talked to you on
12 September 12th --

13 A. So --

14 Q. -- that was --

15 A. -- I got it in the mail.

16 Q. Okay.

17 A. And I read it. And I -- when I was
18 reading it, I went what is that? So I called him.
19 And I said there's -- is this what you meant to
20 say? Because that's not consistent with what you
21 told me on the phone. And that's when he
22 apologized -- he apologized and said can -- can
23 you destroy that and I'll send you a new one in a
24 couple days. You haven't sent that to anybody,

1 have you? And I said no. I didn't even tell my
2 staff about it.

3 Q. Now --

4 A. So I took it to the shredder.

5 Q. When you say he indicated that that was
6 his initial impression that it could have been due
7 to CPR and then --

8 A. I don't know what he was thinking.

9 Q. You said that he --

10 A. I know that --

11 Q. Sorry. Go ahead.

12 A. I don't know what he was thinking. But
13 I do know that after he reviewed it that he --
14 apparently everybody had said that's not correct.
15 And so he must have taken his original report that
16 he had not sent out yet, a preliminary, and he had
17 to change it to what he thought was proper.
18 Dr. Ugwu was released because he could not pass
19 his boards. He was fired.

20 Q. Now --

21 A. So that's a big problem with the Glenn
22 Swaim case is that if you -- you have to pass your
23 boards within a certain period of time or you have
24 to start over. And he -- he failed his last set

1 of boards, and so Jan Gorniak released him. He
2 was fired.

3 Q. Okay. Now, is that an unusual amount
4 of time from the autopsy until calling you
5 September -- it'd be three months later, was that
6 --

7 A. Back then I would always have him call
8 me. He didn't call me. We just assumed it was an
9 overdose. I had no idea that there were liver
10 lacerations or blunt force trauma at all until I
11 got that call. For three months I had no idea.
12 That was news to me. We just assumed it was an
13 overdose. He came in -- you know, there wasn't
14 any marks on him. So, yes, that was unusual
15 because I would have expected any other
16 pathologist to have called me and said, hey, what
17 happened to this guy. But he didn't.

18 Q. Okay. So the first word you got from
19 Franklin County then was September 12th?

20 A. That is correct. And then a couple
21 days later the report was wrong.

22 Q. Let's take a short break.

23 MR. BRUNNER: Sure.

24 Q. And I meant to -- before we go off the

1 record, I meant to tell you, too, Doctor, any time
2 you want to take break or need a break --

3 A. I appreciate it.

4 Q. -- you just let me know and we will.
5 It's not an endurance thing. Only thing I ask is
6 that you answer --

7 THE VIDEOGRAPHER: We're off the
8 record. The time is 11:34.

9 (A short recess is taken.)

10 THE VIDEOGRAPHER: This marks the
11 beginning of disk No. 2. We are back on the
12 record. The time is 11:50.

13 Q. Dr. Cummin, going back to one prior
14 question. I'd asked if you had attempted to
15 contact Detective Downs to inquire of him as to
16 whether or not he had told the family what they
17 had relayed to you. Did you -- did you make any
18 personal attempt to contact Detective Downs?

19 A. Yes.

20 Q. And what was that? What attempt did
21 you make?

22 A. I phone called him on December 15th.

23 Q. Okay. And --

24 A. That's what I have marked down on my

1 meticulous notes.

2 Q. In your what?

3 A. My notes.

4 Q. Okay. And that you were not able to
5 reach him or what? You did not talk to him?

6 A. As far as I know, I talked to him.

7 Q. You --

8 A. Because I -- that's what I wrote down,
9 that I talked to him.

10 Q. And the reports that you said that
11 you -- the subsequent report that you got, I
12 believe Downhour went to the Sheriff's Office to
13 get that report; is that correct?

14 A. Again --

15 Q. Yeah.

16 A. -- on January 3rd is what I wrote down.

17 Q. Okay. Do you know how he had --

18 A. 2012.

19 Q. Do you know how he obtained that,
20 whether he talked to --

21 A. No, I --

22 Q. -- Downs directly?

23 A. No, I don't believe he talked to him.

24 Q. Okay.

1 A. I think he got it from the front office
2 or wherever. I don't think he was available or
3 something.

4 Q. Okay. Do you know whether or not
5 Detective Downs had a subsequent report after that
6 one that he picked -- that Downhour picked up from
7 the dispatcher? Did --

8 A. Not to my knowledge.

9 Q. Or did you get a subsequent report from
10 him?

11 A. I got something eventually, but it
12 wasn't much of a report. It included the
13 transcription of Dr. Ugwu's secretly taped
14 interview, which it was I think in February, so it
15 would have been after that period of time when I
16 got a subsequent report.

17 Q. After the death certificate --
18 certificate was released, they had been
19 communication between you and the prosecutor
20 regarding the records on Glenn Swaim. Do you
21 recall that?

22 A. Possibly.

23 Q. I'll show you what's marked as
24 Exhibit 11.

1

2 Thereupon, David Cummin Exhibit 11 is
3 marked for purposes of identification.

4	—	—	—	—	—
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5 Q. Do you recall receiving that letter
6 from the prosecutor requesting all information
7 that you have concerning Glenn Swaim?

8	A.	I do.
---	----	-------

9 Q. Okay. And it was your understanding
10 she had also made the same request of the
11 Sheriff's Office or did you know that?

12 | A. I don't know.

13 Q. You didn't know that?

14 A. It doesn't say that on here.

15 Q. Okay. Now, that was dated January the
16 5th. At that point you had not decided to have an
17 inquest, is that correct, as of that date?

18 A. I don't know when I decided.

19 Q. Okay. You then issued subpoenas to the
20 law enforcement officers dated January 12th to
21 have an inquest scheduled; is that -- I'll show
22 you what's marked as Cummins Exhibit 12.

23 — — — — —

24 Thereupon, David Cummin Exhibit 12 is

1 marked for purposes of identification.

2 - - - - -

3 Q. That would be the subpoena to Ed Downs,
4 correct?

5 A. Yes.

6 Q. And I believe there were other
7 subpoenas issued to the -- all the other officers
8 that might have been involved in Swaim?

9 A. Yes. To the best of my recollection.

10 - - - - -

11 Thereupon, David Cummin Exhibit 13 is
12 marked for purposes of identification.

13 - - - - -

14 Q. Now, your response to the prosecutor is
15 -- they're stuck together here -- would appear to
16 be Exhibit 13. Look at that and -- I'd ask you if
17 that is your response?

18 Let me ask you, Doctor, is that a copy
19 of a letter that you forwarded to the prosecutor
20 dated January 23rd, 2012?

21 A. It appears to be.

22 Q. That's your signature there on page 3?

23 A. It is.

24 Q. Okay. And at this time had you already

1 received from her the motion to quash the
2 subpoenas that you'd issued for the officers, do
3 you recall?

4 A. By reading the letter, it says that she
5 was trying to quash my subpoena.

6 Q. I believe the second paragraph says
7 your failed attempt to quash my coroner's
8 subpoenas a second time?

9 A. Yes. Because she tried to quash it the
10 first time.

11 Q. The Davis inquest?

12 A. Yes. She had chosen -- she keeps
13 choosing sides on civil matters instead of
14 appropriately getting outside counsel. Correct.
15 Consistently choosing the other side, yes.

16 Q. Okay.

17 MR. BARBIERE: I'm sorry. I didn't
18 hear that answer.

19 A. Consistently chooses the other side,
20 yes.

21 Q. Now, had -- before you issued the
22 subpoenas, was there attempts made to talk to the
23 prosecutor or the sheriff about meeting and
24 exchanging information without the need for the

1 subpoenas?

2 A. After my subpoenas had been issued, she
3 had sent something -- a letter to me that said
4 something about getting together and trying not to
5 put them on the stand or whatever.

6 Q. What --

7 A. I think we were past that moment then.

8 Q. Now, what do you mean "past that
9 moment," Doctor?

10 A. The hostility of this -- the
11 defendants, I would say mainly Downs, towards me
12 on the matter and letters from Laina Fetherolf
13 which are not very positive towards myself I think
14 had determined that it had to be done in a manner
15 that didn't seem to be very favorable. For
16 example, she chose their side and wanted to quash
17 my subpoenas. Well, she's clearly not
18 independent. So how is an independent meeting
19 going to take place if she is not going to be
20 independent. She's already chosen her course. So
21 that's why I proceeded because I -- she even
22 showed up to court still to defend them. She was
23 not independent and she did not recuse herself.
24 She had a conflict of interest and she chose to

1 continue her conflict.

2 Q. Had she expressed to you that she did
3 not want the testimony to occur because it could
4 affect -- adversely affect the criminal
5 prosecution if these questions are asked in -- in
6 open -- in an open public hearing --

7 A. No.

8 Q. -- with law enforcement?

9 A. I don't remember her having that
10 conversation with me.

11 Q. I'll show you what's been marked as
12 Exhibit 14. I think you just referred to that,
13 said she sent you a letter indicating we should
14 all get together and exchange information and work
15 together I believe.

16 - - - - -

17 Thereupon, David Cummin Exhibit 14 is
18 marked for purposes of identification.

19 - - - - -

20 A. Yes. But she's already chosen their
21 side.

22 Q. So you felt her filing to quash the
23 subpoenas as the prosecutor to avoid the public
24 hearing and testimony -- public testimony before

1 -- during the investigation was choosing sides?

2 A. Yes. She -- I did not have counsel to
3 counter her quash attempt. She did not supply
4 with me counsel to be able to proceed with my
5 duties. She left me out on a limb without
6 attorneys. Absolutely she did.

7 Q. She proposed a meeting on January 23rd
8 where the Sheriff's Office would bring all the
9 information that they have to turn over to you.
10 What was your response to that?

11 A. I don't know the date of this letter
12 because it's undated.

13 Q. Uh-huh.

14 A. Exhibit 14 --

15 Q. It refers -- it refers to a prior
16 entry, January 19th, and a meeting to be held on
17 January 23rd, which would lead us to believe it
18 would have been between those two dates.

19 A. The coroner's subpoena is on January
20 20th. It was already set, she had lost her quash,
21 we were able to prevent the quash with no legal
22 representation, and so we proceeded forward.
23 Perhaps a different outcome had I been supplied
24 with an attorney, but it wasn't done.

1 Q. What do you mean "perhaps a different
2 outcome"?

3 A. If I had representation supplied, maybe
4 there could have been some sort of mediation of
5 some sort.

6 Q. But you --

7 A. Of how we were going to arrange things,
8 but I had no representation.

9 Q. So without an attorney, you did not
10 want to meet with the prosecutor and discuss that
11 ongoing criminal investigation?

12 A. I did not have an independent attorney
13 with me.

14 Q. I --

15 A. I was not going to discuss it.

16 Q. I understand you. But as coroner do
17 you need an independent attorney to meet with the
18 prosecutor regarding an ongoing criminal
19 investigation?

20 A. If she has chosen sides and she's
21 quashing my subpoenas, absolutely. I have no
22 representation in court.

23 Q. The inquest that you held was open to
24 the public, correct? It's not closed?

1 A. No.

2 Q. Media can be there?

3 A. They could.

4 Q. Defense counsel could be there for
5 possible suspects?

6 A. They could.

7 Q. Did you obtain any additional reports
8 or documents as a result of that inquest that you
9 did not already have?

10 A. Not that I know of. No, I did not. I
11 do know that.

12 Q. You --

13 A. Because I remember saying at the
14 inquest you still supplied me with the same
15 four-sentence, three-page document that I got
16 twice before.

17 Q. Did you obtain any additional
18 information that you did not have that was
19 beneficial to reviewing the manner and mode of
20 death?

21 A. I'd have to review the tape.

22 Q. You don't recall receiving any
23 additional?

24 A. I can't speak one way or the other --

1 Q. Okay.

2 A. -- on what I remember gaining from
3 that.

4 - - - - -

5 Thereupon, David Cummin Exhibit 15 is
6 marked for purposes of identification.

7 - - - - -

8 Q. I'll show you what's been marked as
9 Exhibit 15. Is that a letter from you to the
10 prosecutor dated February 27th, 2012?

11 A. Okay. Yeah.

12 Q. Okay. Is that a response to the
13 January 5th letter requesting information from the
14 prosecutor?

15 A. No.

16 Q. Had you already supplied the
17 information that was requested in the January 5th
18 letter?

19 A. Yes. Where's January 5th -- okay, let
20 me look.

21 Q. That's Exhibit 11. I'll help you out
22 there.

23 A. I'll retract that answer until I know.

24 Q. All right.

1 A. Yes. I already supplied this
2 information on -- from Exhibit 11, yes.

3 Q. Prior to February 27th, apparently
4 you'd received a subpoena, so you're indicating
5 the information you're supplying here of
6 February 27th is the same information you had sent
7 January 5th --

8 A. I had supplied I believe four times the
9 same information. Remember, there wasn't much of
10 a file. There was some preliminary notes. There
11 was an autopsy report. I mean we didn't have any
12 scene photos, we didn't have anything. I had --
13 there was no file of substance.

14 Q. As I understand Ms. Walsh actually went
15 to the hospital and saw the --

16 A. She did.

17 Q. -- the deceased?

18 A. And her notes are in the file.

19 Q. Okay.

20 A. Original notes.

21 Q. Now, down at the bottom of Exhibit 15 I
22 just had a question. You indicate that you'd told
23 Ms. -- or the prosecutor that you had given
24 permission to Dr. Gorniak to talk to the

1 prosecutor. This permission cites specifically
2 the prosecutor so there's no miscommunication with
3 intermediaries.

4 A. I was removing myself so that she could
5 get whatever information she wanted.

6 Q. Okay. I read that as being limited to
7 only the prosecutor --

8 A. No. She didn't --

9 Q. -- to talk to Dr. Gorniak?

10 A. And she never called her.

11 Q. Okay. But this did not limit it where
12 her investigator or someone from the Sheriff's
13 Office could not talk to her then?

14 A. It doesn't mention -- I mean that's a
15 totally different branch of government.

16 Q. Okay. I -- I read it wrong there. I
17 read this permission cites specifically the
18 prosecutor so there's no miscommunication --

19 A. No. I was trying to make it so they
20 could speak freely to each other. I was being
21 placed in the middle. I -- once again, I had a
22 subpoena duces tecum by the prosecutor, my
23 attorney --

24 Q. Uh-huh.

1 A. -- and had no representation to respond
2 to it; that is correct.

3 Q. When you say your attorney -- but she's
4 acting as the prosecutor, she give you a subpoena
5 to obtain certified copies of the records of the
6 Glenn Swaim --

7 A. She is my attorney.

8 Q. -- investigation, correct?

9 A. She's my attorney.

10 Q. Okay. You think every time you receive
11 a subpoena from the prosecutor, you need to have
12 an attorney appointed?

13 A. I think if you supplied me a subpoena
14 duces tecum, I would take it to the prosecutor,
15 yes.

16 Q. That wasn't my question. My question
17 was: Every time the prosecutor gives you a
18 subpoena to obtain certified records, you believe
19 you'd need to have an attorney appointed?

20 A. I think I need to have one to look at
21 it to see if it's proper, especially on a murder.
22 I had nobody. I was hung out on a limb by myself
23 again.

24 Q. But -- but you're not a party, you're

1 -- you basically are a witness in a -- in a murder
2 investigation or a murder prosecution by the
3 prosecutor, correct?

4 A. I'm not an attorney. If you are going
5 to give me legal documents --

6 Q. I'm sorry.

7 A. -- I'm going to take them to my
8 attorney.

9 Q. Okay. So you think -- you believe if
10 the prosecutor gives you a subpoena, you can't go
11 to the prosecutor and talk to her about the
12 subpoena she give you?

13 A. I don't understand the subpoena route
14 because I've already given her everything. Then
15 she wasn't satisfied, so she subpoenaed me.
16 Sounds like there's more to it. Sounds like I
17 need an attorney. It's a legal process; I'm not
18 an attorney.

19 Q. If you issue a subpoena to deputies to
20 appear, do you believe they could come to you and
21 talk to you about the subpoena before --

22 A. Sure.

23 Q. -- the proceeding?

24 A. Sure they could.

1 Q. Okay. Was there ever a meeting in
2 response to the prosecutor's letter asking that
3 the parties get together and exchange information?
4 Was there ever a -- did that meeting ever occur?

5 A. It did not. But I had texted about
6 either doing it by phone or -- the meeting by
7 phone or whatever. I cannot specifically say.
8 But I know that there was an accommodation to a
9 meeting, whether it was this one or whatever. But
10 I assume it was this one because I don't know of
11 any other meetings. There should have been a
12 texting communication that we can talk by phone or
13 whatever, speaker phone. I don't recall. But I
14 know that there was something done. There was an
15 answer to that of some sort.

16 Q. February 22nd there was a special
17 prosecutor appointed to conduct a grand jury into
18 the Swaim death, correct, David Warren?

19 A. I don't know the exact date.

20 Q. Okay. Around -- around the time of
21 this communication, actually prior to your
22 February 27th letter, I don't know if you recall
23 it being that time, but at least in February of
24 that year or around that time?

1 A. Could be.

2 Q. Okay. You know there was a special
3 prosecutor appointed and a grand jury convened to
4 invest -- to look into the death of Mr. Swaim?

5 A. I do.

6 Q. Okay. And there was some
7 communication, some meeting between you and the
8 special prosecutor regarding your records and
9 autopsy photographs?

10 A. There was one arranged. He did come on
11 a Saturday morning; that is correct.

12 Q. And do you recall he at some --

13 A. That was later.

14 Q. I'm sorry?

15 A. That was later I believe.

16 Q. You recall at some point he filed a
17 motion with the court regarding the autopsy
18 requiring the autopsy photographs to be provided
19 and then that motion set forth details as to what
20 his belief was of the meetings between you and
21 him, correct?

22 A. You'll have to break down your
23 question. There's a lot in there.

24 Q. I'll show you what's marked as

1 Exhibit 16.

2 - - - - -

3 Thereupon, David Cummin Exhibit 16 is
4 marked for purposes of identification.

5 - - - - -

6 Q. Now, basically what I want to do is go
7 over some of this and just get you to confirm
8 whether or not you agree that this is the process
9 of how things happened or what happened. The
10 special prosecutor, second paragraph, indicates
11 that upon being appointed he --

12 A. If I can read the first paragraph.

13 Q. I'm sorry?

14 A. May I read the first paragraph?

15 Q. Oh, sure. Sure.

16 A. Just so I can get the context.

17 Q. Sure.

18 A. Thank you.

19 Q. Okay. Second paragraph now Mr. Warren
20 indicates after his appointment he served a letter
21 on all parties including the prosecutor and the
22 sheriff. Do you recall receiving a letter from
23 him indicating he was the special prosecutor?

24 A. Not specifically.

1 Q. I understand. Then it says May 22nd,
2 2012, you may not remember the exact dates, I just
3 asked if you recall he and his investigator
4 meeting you at your office in Logan?

5 A. I don't remember that, but I'm sure it
6 happened.

7 Q. Okay.

8 A. It was in my notes that it occurred.

9 Q. Okay.

10 A. But I don't remember the meeting.

11 Q. He indicates he had asked to see the
12 autopsy photographs; you had asked if they could
13 do it later. I think you had wanted to pick up
14 your children. He's indicated it's no problem,
15 he'd try to get them from Dr. Gorniak. Does that
16 help refresh your memory or --

17 A. I think most of this is highly
18 inaccurate, but I would be happy to address your
19 issues.

20 Q. Well, I'm going to go -- I just want to
21 go through it step by step.

22 A. Yes, I understand that.

23 Q. Okay. Okay.

24 A. So what's your question?

1 Q. Paragraph 3, you don't recall, then?

2 A. We don't have autopsy photographs at
3 this point.

4 Q. That I didn't ask. We're going to get
5 into that.

6 A. Okay.

7 Q. I'm just asking you if paragraph 3 --

8 A. Yes. I'm answering your question. You
9 said do I recall him saying that I would like to
10 see the autopsy photos but I have to leave and go
11 back to my sitter. That's false. We were not
12 given autopsy photos, period.

13 Q. Okay. So you didn't indicate --

14 A. That's false.

15 Q. -- can we do that later or --

16 A. No.

17 Q. -- get into that later?

18 A. We don't have them.

19 Q. Okay.

20 A. We never -- we were not supplied a
21 standard protocol to have autopsy photos at that
22 time by Franklin County Coroner's Office.

23 Q. Okay.

24 A. They were -- they are now, we get them

1 now, but that might have started in 2014.

2 MR. TEETOR: Excuse me a minute. I
3 hate to interrupt, but this will be better if
4 you'll each let each other finish. There's --
5 you're getting in a hurry, kind of interrupting
6 and it's marking it hard for the record.

7 Q. All right. I think both of us jump in
8 a little quick, Doctor, so if you --

9 A. I apologize.

10 Q. I do too. We'll both slow down or try
11 to.

12 A. It's false.

13 MR. LAMBERT: Mr. Teetor, keep an eye
14 on us.

15 A. He wanted autopsy photos; they were not
16 supplied as standard at that time. It's false.
17 What he says he came there and I had notes photos,
18 it's false. I did not have photos.

19 Q. He didn't say you had. He asked to see
20 photos and you indicated if you could talk at
21 later time because you wanted -- you needed to go.
22 It says do that. I'm not sure what that means.
23 I'm --

24 A. I think it's false because he clearly

1 implies that I had the photos and I wasn't giving
2 them to him at that time because I had to go back
3 to my sitter.

4 Q. Do you --

5 A. I'm saying that's false. We did not
6 have photos of autopsies supplied at that time.

7 Q. Okay.

8 A. That's false.

9 Q. You recall him indicating he would try
10 to get them from Dr. Gorniak?

11 A. Yes.

12 Q. Okay. And he indicates that --

13 A. Because I don't possess them.

14 Q. The next paragraph, he indicates that
15 he met with Dr. Gorniak and that she indicated to
16 him that since she was under contract with the
17 Hocking County coroner, she would -- he would need
18 to go through you to get the photographs.

19 A. Okay.

20 Q. Was that your understanding that she
21 was not permitted to leave -- release photographs
22 to anyone and -- but they had to go through you?

23 A. No.

24 Q. Okay.

1 A. I was not communicated this at all that
2 I -- to my understanding.

3 Q. You had never communicated to her not
4 to release photographs --

5 A. No.

6 Q. -- to any -- let me finish -- any
7 investigative person?

8 A. No.

9 Q. Okay. Did Dr. Gorniak ever send you
10 the photographs after she met with the special
11 prosecutor -- yeah, the special prosecutor? Did
12 she send you --

13 A. Yes.

14 Q. -- the photographs?

15 Okay. You received a subpoena to
16 produce your complete file to the grand jury. Do
17 you recall that? And -- or did you appear at the
18 grand jury with your file?

19 A. Yes.

20 Q. Okay. Did you have the autopsy
21 photographs with you at that time?

22 A. No.

23 Q. Do you recall indicating you'd left
24 them at the office?

1 A. No. I think that's false.

2 Q. The --

3 A. I didn't have them.

4 Q. No. This is over a month after he had
5 met with Dr. Gorniak. She still had not sent them
6 to you?

7 A. She overnighted them to me at some
8 point.

9 Q. Okay.

10 A. They remained unopened in the file in
11 the other room.

12 Q. Okay.

13 A. I was given 72 hours by my attorney,
14 the prosecutor, to produce slides and autopsy
15 photos of which I did not possess. I had no
16 representation to counter a threat of 72 hours or
17 being charged with something. I called Jan
18 Gorniak at home and I said, I have a problem. I
19 need these autopsy photos and slides that I don't
20 possess. I would think that you would subpoena
21 the person who possesses them. Now, your
22 paragraph 4 says that they're supposed to go
23 through me. That was not informed -- I was not
24 informed of that duty. So she said, don't worry

1 about it, I will go into tomorrow morning and I
2 will cut new slides and send them to you with the
3 photos. I had 72 hours to produce them. At 48
4 hours, I received it overnighted to me and I had
5 Mike Downhour take it to her office to deliver it
6 personally to her because I was under threat by my
7 attorney with no representation.

8 Q. When you say --

9 A. She was not --

10 Q. -- by --

11 A. -- there.

12 Q. When you say by your attorney, you're
13 talking about the prosecutor --

14 A. Yes.

15 Q. -- that had issued the subpoena for the
16 records?

17 A. Yes. She threatening me, yeah.

18 Q. All right.

19 A. With prosecution.

20 Q. All right.

21 A. If I didn't respond within 72 hours.

22 Sometimes this is an emergency after waiting how
23 many months. So she was not there. He left a
24 message that we had the photos and the slides and

1 that he was taking them back to my office. I was
2 24 hours early from the deadline. She called my
3 office a couple hours later, which I think she
4 refers in her testimony as an errand boy comment.
5 And what she really said was I'm not coming to
6 your effing office to pick up any effing slides on
7 my effing time and blah, blah, blah. I could hold
8 the phone out to her while my office staff heard
9 it all. And I said, okay, well, they're here in
10 the pickup box for you. And then she hung up.

11 Q. Why were they not left at her office?

12 A. Because if somebody lost them or
13 misplaced them, it was my behind that was going to
14 be punished. They were going to be specifically
15 handed to her because she was threatening me and I
16 had no legal representation to counter it.

17 Q. You -- they couldn't be left with her
18 at her office with a receipt showing that they'd
19 been left?

20 A. I wasn't taking any chances.

21 Q. Okay.

22 A. Call me crazy, but I'm not taking
23 chances. So I put them in the pickup box --

24 Q. Okay.

1 A. -- where unfortunately I didn't know
2 they remained there for months, unopened to this
3 day. And so when Mr. Warren came to my office on
4 a Saturday morning and I pulled the file to give
5 to him, the photos weren't in there. Do you know
6 why? Because none of my office staff was there
7 and they didn't tell me they were still in the
8 pickup box, that she apparently didn't feel the
9 necessity to come send one of her deputies over to
10 get them, as she so conveniently would subpoena me
11 through that.

12 Q. Now --

13 A. They were available. She refused to
14 pick them up.

15 Q. Well, you did not have them with you
16 when -- when you went to the grand jury?

17 A. No, because I didn't know that --

18 Q. At --

19 A. I don't know the dates. I did not have
20 them in the file. They were not delivered by
21 overnight at that time or they were in the pickup
22 box. I don't know the dates.

23 Q. You would recall the -- Mr. Warren then
24 agreeing to meet you the morning of August 18th or

1 the middle of August?

2 A. I'd have to check the date, but I know
3 we met on a Saturday morning.

4 Q. Okay. Now, he indicates you told him
5 that due to budget problems you could not provide
6 copies and he would have to bring a laptop to view
7 the photographs.

8 A. I don't remember saying that. I mean
9 could be.

10 Q. But you already had the copies you said
11 in a sealed envelope in the pickup box?

12 A. I didn't know where -- I didn't know
13 that. I don't know what the dates -- I don't have
14 a sequence of the timeline. I'm telling you they
15 were either not delivered yet or they were in the
16 pickup box.

17 Q. Well, I think you already indicated
18 they were actually delivered to you before the
19 grand --

20 A. I don't know what the --

21 Q. Let me finish. Before the grand jury
22 because you got them 24 hours in advance?

23 A. I don't know. I don't see Laina
24 Fetherolf's 72-hour threatening letter in here to

1 check the date.

2 Q. Let me -- let me back up. You
3 indicated that you had received them within the 72
4 hours. You knew he had --

5 A. 48 hours, yes.

6 Q. Okay.

7 A. We delivered them to her office for
8 her.

9 Q. And -- and --

10 A. That is correct.

11 Q. And it appears from this letter that
12 the special grand jury proceeding was August the
13 3rd.

14 A. Okay.

15 Q. So if the grand jury -- if we assume
16 that's correct that the grand jury was August the
17 3rd, then this August 19th would be some 15 days
18 after the grand jury and thus 15 to 16 -- 16 days
19 after you had received the photographs. Do you
20 see the -- do you understand the progression?

21 A. I don't know what the photographs were
22 received. But it's possible that I went to the
23 grand jury assuming they were still in the file
24 and when I opened the file up, just like when

1 David Warren came to my office and they weren't in
2 there, I didn't know where they were, maybe I said
3 they must still be back at the office. But they
4 weren't -- depending on when they were delivered,
5 they were either in the pickup box or they weren't
6 delivered. They were not in the file on the
7 Saturday morning --

8 Q. Okay.

9 A. -- when I saw Dave Warren because they
10 were in the pickup box. That's the only time I
11 knew exactly where they were, based upon a lack of
12 timeline in front of me on when they were mailed.
13 They're in the other room, you can check the date
14 and see when I received them and I can answer the
15 question better.

16 Q. Okay. You say that a -- can we --
17 let's take a short break.

18 A. I'll bring the file in.

19 MR. BRUNNER: Sure.

20 Q. Yeah. So we can look at the date.

21 A. Absolutely.

22 MR. BRUNNER: I have a room set up
23 where all the documents that we didn't produce
24 that you guys want to look at are set up to be

1 looked at.

2 THE VIDEOGRAPHER: We are off the
3 record. The time is 12:27.

4 (A short recess is taken.)

5 THE VIDEOGRAPHER: We are back on the
6 record. The time is 12:34.

7 Q. Okay. Doctor, you've obtained the file
8 for us. And it looks like the photographs that
9 you were talking about after talking with Gorniak
10 were sent -- what was the date on that again?
11 August 29th, which I think helps give me a
12 timeline here.

13 The -- Mr. Warren indicates that as of
14 August the 18th -- well, let me back up. It would
15 appear to me that still at this point in this
16 August -- July, August situation, you thought the
17 photographs were on the disk that was in the file;
18 is that correct?

19 A. That is correct.

20 Q. Now, Mr. Warren indicates that at the
21 August 18th meeting you became upset, things got
22 less than cordial. Do you recall that being the
23 situation?

24 A. Absolutely.

1 Q. Okay. You -- they indicated they
2 brought their laptop because you had told them to
3 do so they could view the -- could view the
4 photographs. You called home to have the file
5 delivered to your office; is that -- do you recall
6 that?

7 A. I think it was actually -- I don't know
8 if it was in my car or where it was, but I
9 purposely had it out of the office, meaning my
10 coroner's office, so that I would have it in my
11 business office.

12 Q. Okay.

13 A. For the meeting.

14 Q. And you at that time reached in the
15 file, pulled out the disk and indicated there is
16 your effing pictures, take them, I'm done?

17 A. No.

18 Q. Do you recall that?

19 A. That's not what really happened.

20 Q. What happened?

21 A. What happened was is Dave Warren came
22 into my office and he said -- he had Jeff Sholl
23 with him. And I've known Jeff a long time. And
24 he said that the whole problem with this case is

1 I'm just not getting along with everybody. And I
2 said, no, the whole problem with this case is the
3 detective lied to the family on how their son
4 died. I didn't know it was really their nephew,
5 but it was really their nephew, not their son, the
6 Enderlies. And he goes, no, no, no, the problem
7 is you're not getting along with everybody.
8 Emphasis on that statement.

9 Q. Uh-huh.

10 A. And looking at me with big eyes. And
11 that's when I looked at him and I said -- he
12 wanted me to change the death certificate. And I
13 said I'm not lying for you, I'm not lying for
14 Laina Fetherolf, I'm not lying for the sheriff.
15 I'm not lying for any of you. I'm not changing
16 the death certificate. The autopsy's what the
17 autopsy says. The forensic evidence is there.
18 There's no overdose. I'm not changing it. He
19 came there to strong-arm me.

20 And then he gave me a lecture, a
21 five-minute lecture, on how it really wasn't
22 illegal to lie to the public. And after he was
23 done with the five-minute lecture of that to me, I
24 told him he could go do something anatomically

1 impossible to himself. And then I escorted him
2 out of the office. That's what happened.

3 (A discussion is held off record.)

4 MR. BARBIERE: He keeps saying he.
5 Who's the "he" he's talking about?

6 A. Dave Warren.

7 Q. You're talking about Dave Warren?

8 A. And then they sat in my parking lot for
9 about 15 minutes because I had left my family on a
10 Saturday morning to have a guy come in my office
11 and strong arm me and tell me that he wanted the
12 death certificate changed with his 6-foot-6
13 bodyguard.

14 Q. You're talking about Mr. Sholl?

15 A. Jeff Sholl.

16 Q. Okay.

17 A. And --

18 Q. You --

19 A. -- I went out to the parking lot
20 because I was pretty unhappy about what had just
21 gone on. And I didn't record it, I didn't have
22 anything to prove it. And they're just sitting in
23 my parking lot. So I looked at them and they
24 rolled their window down and I said truth and

1 justice, gentlemen, truth and justice for all.

2 And that's the statement because they came there
3 to cover it up. Dave Warren's dirty, man.

4 Q. What do you mean?

5 A. He came there to change everything. He
6 wanted me to change the death certificate.

7 Q. Okay. Now, in the interim it appears
8 they had viewed the disk and realize -- found
9 there was no autopsy photographs --

10 A. The two.

11 Q. -- on it?

12 A. Yes.

13 Q. I think now we've got our time frame as
14 a result of that, is the three-daytime line you
15 were given to get the photographs. Look at
16 Exhibit 19.

17 - - - - -

18 Thereupon, David Cummin Exhibit 19 is
19 marked for purposes of identification.

20 - - - - -

21 A. Are we done with this document?

22 Q. Yes, at this point.

23 A. I find this highly inaccurate.

24 Q. All right.

1 MR. BARBIERE: What was the last thing?
2 Did you say I find that highly --

3 A. Highly inaccurate.

4 MR. LAMBERT: Give that to Aaron or
5 Steve. I'm short one. We'll look together and
6 then I'll --

7 MR. BARBIERE: Okay.

8 Q. Actually, are you looking at -- this
9 appears to be your response to receiving the --

10 MR. BRUNNER: Just a second. Let me
11 see what you've handed the witness because I don't
12 think you gave --

13 MR. LAMBERT: Here it is.

14 MR. BRUNNER: Oh, okay.

15 THE WITNESS: I'm sorry. That's yours.
16 I'll take this one.

17 MR. BRUNNER: No, that's fine. Take
18 this one. Thank you.

19 Q. It would appear to be a letter from you
20 to Dave Warren dated August 27 responding to
21 receiving the -- an order to provide the
22 photographs.

23 A. It's actually to Judge Wallace.

24 Q. Well, it says Judge Wallace see David

1 Warren, so apparently to both of them?

2 A. It went to Hocking County Common Pleas
3 Court because I probably didn't have a way to
4 respond to Dave Warren because I don't think he
5 had a private practice at the time.

6 Q. You indicate that on August 27th you
7 had called Franklin County Coroner's Office to
8 request the photographs, which is what you told us
9 earlier you did when you received a notice to --

10 A. That is correct.

11 Q. -- produce them in three days. So
12 that's the timeline, which when we got down later
13 in the letter we found the disk didn't have the
14 photographs on them. That makes sense, correct?

15 A. Yes.

16 Q. Okay. Now, backing up just a bit.
17 That letter kind of spanned a long time frame.
18 Exhibit 17, would you look at and I'll purport to
19 you that that is a copy of the subpoenas that were
20 issued for the -- or, no, affidavits that were
21 filed in response to the subpoenas. We're short a
22 couple on this one. Did you get a copy?

23 A. Yes.

24 MR. BRUNNER: Yes.

1 Q. Okay. That's where my copy went.

2 - - - - -

3 Thereupon, David Cummin Exhibit 17 is
4 marked for purposes of identification.

5 - - - - -

6 Q. Just maybe for time, saving time, if
7 you'll look at them in the light that these were
8 the affidavits that were submitted in response to
9 your subpoenas for your inquest. Do you see
10 they're dated January 18th --

11 A. These are the affidavits prepared by
12 Laina Fetherolf on behalf of David Valkinburg
13 since she wrote it and he signed it; that is
14 correct.

15 Q. Okay. So my statement that they're
16 affidavits that were submitted in response to the
17 subpoenas you had issued for the inquest is
18 correct?

19 A. That is correct.

20 Q. Okay. Now, in his affidavit David
21 Valkinburg states that he had texted you on or
22 about December 27th, asking if you would be
23 willing to meet with the personnel at the
24 Sheriff's Office and the prosecutor regarding the

1 death of Glenn Swaim. We've talked earlier, I
2 believe you indicate, yes, that request --

3 A. There was a request. I didn't know the
4 time.

5 Q. Okay.

6 A. When it was.

7 Q. You responded you'd done -- you were
8 done with your part in the Swaim matter but would
9 be available for a phone conference?

10 A. Okay.

11 Q. Is that correct?

12 A. Is that on here somewhere?

13 Q. That's No. 4 there. I'm looking at
14 Valkinburg's --

15 A. That's his sworn affidavit. I -- I
16 think that there is something consistent with
17 that, but I don't have it in front of me to
18 confirm that that's true.

19 Q. Don't have what in front of you?

20 A. The --

21 Q. Do you have notes that would have that
22 on it?

23 A. I think it was done by text message.

24 Q. Okay. Well, I think he -- No. 3, he

1 indicates that there was a -- he did text it. Do
2 you have notes that would help confirm this or --

3 A. No, not on this. I mean, no.

4 Q. Okay. You said you didn't have it in
5 front of you --

6 A. I mean I had a different phone at the
7 time.

8 Q. Okay.

9 A. I don't have it.

10 Q. But you said you didn't have it in
11 front of you --

12 A. I just remember.

13 Q. -- to confirm it and I wasn't sure what
14 you meant.

15 A. I mean he's stating what the text said,
16 he's paraphrasing. I'm taking him --

17 Q. Okay.

18 A. -- at his word that it's factual.

19 Q. And at that point he says you had given
20 no indication of wanting any additional
21 information from him or anyone at the Sheriff's
22 Office. Had there been a request for additional
23 information at the Sheriff's Office?

24 A. Yes.

1 Q. That had not been complied with?

2 A. That would be -- remember, on this --
3 on the 27th of December -- what's this dated? --
4 of 2011.

5 Q. Uh-huh.

6 A. -- Mike Downhour went to deliver a
7 second autopsy three months after Detective Downs
8 already possessed it and was given the same
9 four-sentence report. This one. There's four
10 sentences as I recall. That is the full report I
11 was given a second time. And then January 3rd I
12 believe he went back to the office and got this.

13 Q. The same report and --

14 A. The same four-sentence --

15 Q. And you believe he got -- received that
16 from the dispatcher then?

17 A. I don't know where he got it from.

18 Q. Okay. There -- there was -- you're not
19 aware of any direct contact with Detective Downs
20 to see if that's the accurate report or not?

21 A. The report says on the above date and
22 time I was dispatched to 32179 Shaw Road in
23 reference to a possible drug overdose. One
24 sentence.

1 MR. TEETOR: You need to slow down a
2 little.

3 THE WITNESS: I'm sorry. Do I need to
4 repeat that?

5 MR. TEETOR: No. Just slow down.

6 A. Upon my arrival, Hocking County EMS
7 personnel were escorting the listed victim in the
8 squad. Sentence No. 2.

9 Next sentence, No. 3, The scene was
10 held until Detective Moritz arrived on scene.

11 The fourth sentence of the complete
12 report is: A report was filed. That's it.
13 That's what I've gotten twice. That's -- that's
14 the exchange that I got from the Sheriff's Office.
15 It's not very helpful.

16 Q. Now, if we look at Downs' affidavit,
17 which is the second page, it indicates on
18 September 29th he dropped off the Swaim report.
19 Is that the report you're referring to?

20 A. I have documented September 28th --

21 Q. Okay.

22 A. -- in my meticulous notes, yes.

23 Q. Now, when you say your notes, you have
24 notes that would --

1 A. I have work product with my attorney.

2 Q. Well, is it -- is it something that you
3 wrote down September 28th, 2011 that -- before
4 you --

5 A. I don't know when I wrote it down.

6 Q. Before you had your attorney?

7 A. I don't know.

8 Q. Because you said they're meticulous
9 notes. If you made them three years later, I'm
10 not sure how meticulous they would be I guess was
11 my question.

12 A. No, they were not made -- I don't know
13 when they were made. They had been a sequence --

14 Q. But they made -- were these notes
15 you're talking about that you say -- I assume this
16 is something you may later refer to to refresh
17 your memory as to when you did things?

18 A. No. That's a note.

19 Q. Okay. That's a meticulous note?

20 A. That is documentation. You can take
21 meticulous out if you want.

22 Q. It says Laina --

23 A. Notified.

24 Q. -- notified 11-2-11.

1 A. That's when I told her about the
2 homicide, yes. And then they were condensed into
3 a --

4 Q. Okay. I'm just referring --

5 A. -- work product.

6 Q. Referring to the fact --

7 MR. BRUNNER: Don't cut him off.

8 Q. -- that you said on September -- it was
9 September 28th instead of September 29th because
10 you kept meticulous notes.

11 A. Okay.

12 Q. Were they notes that were kept at the
13 time the events occurred?

14 A. They were written -- that -- he dropped
15 them off at that day, yes.

16 Q. That wasn't what I asked. The notes,
17 I'm talking about your personal notes that are
18 meticulously kept. Are they kept as things -- as
19 events occur?

20 A. I don't -- they were compiled as I did
21 things.

22 Q. As you did things. So around the time
23 of September 28th, then, you would have compiled
24 the note that said that's when you -- the Swaim

1 report was dropped off to you?

2 A. Yes.

3 Q. Okay. Did you keep notes of all the
4 occurrences that were going on in September -- or
5 I mean in 2011, '12, '13 and '14?

6 A. I -- I kept notes on what was going on,
7 yes.

8 MR. LAMBERT: Okay. I would ask that
9 we be provided with a copy of those notes that
10 were -- anything that was prepared prior to
11 preparing anything for counsel.

12 MR. BRUNNER: I -- we'll take a look.
13 If it's responsive, if you want to get me a new
14 request, I think if it's something different than
15 what you've asked for before, we'll take a look at
16 that too.

17 MR. TEETOR: Well, we clearly asked for
18 that. I would like to have it before we go on
19 with the deposition if I may.

20 MR. BRUNNER: Well --

21 MR. TEETOR: Shouldn't take long to
22 copy.

23 MR. BRUNNER: I don't have anything
24 that I am aware of that I haven't turned over.

1 MR. TEETOR: Well, he does.

2 MR. BRUNNER: Again, it's not here. I
3 don't have anything in this office that has not
4 been turned over, not been made available to you.

5 MR. TEETOR: I --

6 MR. BRUNNER: All right?

7 MR. TEETOR: If that's the case, then
8 I'm willing to end up reserving time to rerequest
9 him once we're provided with the notes that
10 weren't given to us earlier.

11 MR. BRUNNER: Well, if they're
12 responsive, you tell me what answer -- you don't
13 think I've answered, not responded to and I will
14 be glad to look at it. I have a duty to do that
15 under the rules and I will be glad to.

16 MR. TEETOR: Well, I won't argue with
17 you. I'm just reserving my rights to question him
18 about notes that were not produced,
19 contemporaneous notes that were not produced.

20 MR. LAMBERT: And I would reserve --
21 we'll reserve that also.

22 Q. Just a couple questions on that,
23 Doctor, do you -- do you still possess these notes
24 then?

1 A. I don't know. Maybe.

2 Q. Where would they be if you maybe have
3 them?

4 A. I don't know. I'd have to look.

5 Q. You corrected me and said it was
6 September 28th instead of the 29th. When was the
7 last time you looked at the notes that you would
8 recall it was September 28th instead of the 29th?

9 A. I don't know. I don't know how long
10 ago, but I just know 1-14-28.

11 Q. Pardon?

12 A. I knew it went 14 to 28.

13 Q. I'm sorry. What?

14 A. The dates -- the date was September
15 14th and then date -- September 28th.

16 Q. What was the 14th?

17 A. Let's see. 28th was when he came.

18 Q. "He" being?

19 A. The 14th was when -- was when Captain
20 Alford was notified of the death.

21 Q. Okay. If -- if we say "he" and then we
22 go read this deposition --

23 A. I tried not to --

24 Q. -- later, we -- it's hard to refer to

1 who "he" is?

2 A. I'm sorry. Captain Alford was on
3 September 14th.

4 Q. That's when you saw him the at the
5 fair?

6 A. Right.

7 Q. Okay.

8 A. And then Downs had it September 28th.

9 Q. Okay. Now, are you going from
10 specifically memory or --

11 A. Memory.

12 Q. -- reviewing your notes?

13 A. No, memory.

14 Q. Did you review your notes before you
15 came to the deposition?

16 A. I reviewed -- not my notes. I don't --
17 I didn't review those, but I reviewed, you know,
18 what I had at home, you know, this stuff, the
19 letters or whatever.

20 Q. The notes that you told me about, the
21 meticulous notes that you keep, did you review
22 them in the last few days in preparation for this
23 deposition?

24 A. No.

1 Q. Okay. When was the last time you
2 recall reviewing them?

3 A. I don't remember.

4 Q. Now --

5 (A discussion is held off record.)

6 Q. Do you have them with you -- with you?

7 A. No.

8 Q. Have you turned them over to
9 Mr. Brunner?

10 A. I don't know what he has.

11 Q. Okay.

12 MR. BRUNNER: If we would have withheld
13 anything, you would have gotten a privilege log.

14 MR. LAMBERT: Yeah. I'm not accusing
15 you of withholding them. I'm just trying to find
16 out where they're at or how we can determine if
17 they -- if they still exist I guess.

18 MR. TEETOR: Rick, I'm sure your client
19 didn't spoliage contemporaneous notes. Do you
20 know where they are? Are you going to provide
21 them?

22 MR. BRUNNER: I don't think that's what
23 he was talking about. I think -- do you want to
24 take a counsel-only conference out in the hall and

1 I can give you an idea.

2 MR. LAMBERT: Okay.

3 MR. TEETOR: Let's do that if you don't
4 mind.

5 THE VIDEOGRAPHER: We are off the
6 record. The time is 12:52.

7 (A short recess is taken.)

8 THE VIDEOGRAPHER: We are back on the
9 record. The time is 12:59.

10 A. I apologize that I was hung up. I did
11 not take contemporaneous notes. That was the
12 extent. Sorry. I misinterpreted it.

13 Q. Look at the prosecutor's affidavit,
14 which is the next page of your -- we'll try to
15 move on here. She indicates that when she read
16 the report in the paper there was information in
17 there that was more than what was in the -- the
18 autopsy report. Had you had any consultation with
19 the prosecutor or talked with her about the detail
20 -- any of the details of the -- of this death
21 investigation or homicide before releasing it to
22 the press?

23 A. The last conversation I had was when
24 she was dropping the "F" bomb, three "F" bombs per

1 sentence. And I don't understand this since she
2 was never subpoenaed --

3 Q. Let me --

4 A. -- by --

5 Q. Let me back up. I believe the -- the
6 release we're talking about was in December when
7 the death certificate was signed. So I'm talking
8 about prior to giving the press release regarding
9 the Swaim matter, did you discuss that matter with
10 the prosecutor?

11 A. Yes. On the November -- 2nd.

12 Q. That's when you delivered your --

13 A. That's when I told her what was
14 happening. She didn't have a clue what was going
15 on.

16 Q. Okay. Now, after the events we've just
17 talked about, there was a letter you sent to the
18 sheriff regarding disassociating -- the permanent
19 dissociation of the Coroner's Office with
20 Detective Downs, correct?

21 A. I don't have a copy of that.

22 Q. All right. Now you do.

23 A. Yes.

24 Q. I'll show you what's marked as

1 Deposition Exhibit 18.

2 - - - - -

3 Thereupon, David Cummin Exhibit 18 is
4 marked for purposes of identification.

5 - - - - -

6 Q. Now, I'm not going to ask you about the
7 whole letter, Doctor. I mainly first just want to
8 know is that a copy of the letter that's dated
9 March 5th, 2012 you addressed to Sheriff North
10 with your signature on page 3?

11 A. I would like to read it if that's okay.

12 Q. Okay.

13 A. I don't have a copy of this. It
14 crashed -- my hard drive -- I couldn't get it. So
15 I would like to see what I wrote.

16 Q. Do you want me to --

17 A. Yes.

18 Q. I'd asked you if that is a copy of a --

19 A. It is a copy, yes.

20 Q. -- March 5th, 2012 letter that you sent
21 to Sheriff North --

22 A. Yes.

23 Q. -- indicating a permanent dissociation
24 with Detective Downs?

1 A. Yes.

2 Q. And then Sheriff North's response is
3 page 4 of that document you received, correct?

4 A. Yes.

5 Q. Now, after the Swaim matter, after the
6 grand jury proceeding that lasted I think we've
7 seen at least through August, at that point there
8 was an order from Judge Ward for the parties to
9 meet and attempt to come up with a protocol to
10 handle crime scene investigation -- death scene
11 investigations, correct?

12 A. What's the question?

13 Q. Judge Ward had indicated to the parties
14 that they need to get together and come up with a
15 death scene investigation protocol for the parties
16 to follow to attempt to work better together so to
17 speak?

18 A. No. That's not the case at all.

19 Q. A protocol was developed?

20 A. A protocol was developed.

21 Q. All right.

22 A. But not under those circumstance.

23 Q. What were the circumstances?

24 A. The circumstances were that I had a

1 writ of mandamus action I believe at that time.

2 And I had to consult an attorney because my -- my
3 attorney was suing me and I wasn't given any --
4 I'm sorry. I'm misspeaking.

5 I was having a judgment of \$505 by Dave
6 Warren against me. That's what it was. Pardon my
7 confusion. That's when he had come to my office
8 and then when he left he was going to charge me
9 \$505 for wasting his time. So he had placed that
10 in court for me to pay the \$505. And when I took
11 it to my attorney, because now I had to involve an
12 attorney since I was being I guess sued by a
13 special prosecutor, and my attorney said, well,
14 you've had problems with getting into crime
15 scenes, so you cannot file a separate complaint.
16 But we can file a cooperation agreement and attach
17 it to this.

18 The protocol was the idea of my
19 attorney, not Judge Ward. And he went to Judge
20 Ward and filed that he would like to create a
21 protocol of cooperation. And Judge Ward then
22 accepted it and then I believe over almost 18
23 months we negotiated this contract of sorts and
24 Judge Ward then signed it and -- and waived the

1 \$505 and that was the end of it.

2 Q. Okay.

3 A. But this is attached to Dave Warren's
4 complaint against me but it was not initiated by
5 Judge Ward.

6 Q. I think -- let me see that. Let me
7 have that. Let me see the last page. That's
8 actually some notes from my office. If you would
9 just tear the last page off.

10 MR. BRUNNER: I'll take it off. Don't
11 worry about it.

12 MR. LAMBERT: Yeah. Just throw it
13 away. You can just get rid of it.

14 Q. But this is a copy of the protocol that
15 was agreed upon, Exhibit 20?

16 - - - - -

17 Thereupon, David Cummin Exhibit 20 is
18 marked for purposes of identification.

19 - - - - -

20 A. Yes.

21 Q. Okay. Let's look at Exhibit -- the
22 complaint, Exhibit 2. I'll find my copy. I don't
23 know what I did with it. Oh, here it is.

24 Paragraph 20 of the complaint, if

1 you'll look at that, Exhibit 3 I think it is.

2 Actually, no, let me see it. It should be
3 Exhibit 2. Yes. We're probably done with the
4 others if you want to kind of stack them up there
5 so we can keep them out of your way. Yep. Yeah.

6 MR. BRUNNER: Yeah. I need to get that
7 copied.

8 Q. We'll organize them later.

9 Now, paragraph 20 is part of the
10 complaint in the case that the bulk of the time
11 you had served as coroner you had two coroner
12 investigators, correct?

13 A. Correct.

14 Q. And they were -- they were paid 4,150 a
15 year, plus they received healthcare and
16 retirement?

17 A. They did.

18 Q. Now, did you understand that they
19 received a percentage of a year retirement each
20 year, that at that time the minimum retirement
21 eligibility was 6,000 and they were receiving a
22 percentage of a year?

23 A. No. I was not under that
24 understanding. I thought it was 4,000.

1 Q. Okay. Okay.

2 A. Are you sure it's 6?

3 Q. I'm not sure. I just going on what the
4 auditor told me so --

5 A. Okay. I don't know. I -- my
6 understanding is they got paid that much because
7 4,000 was what they needed to get their benefit.

8 Q. Okay. Now, part of all of this
9 financial issue started because PERS changed their
10 minimum requirements for eligibility for PERS,
11 correct?

12 A. My understanding was from 4,000 to
13 12,000, not 6,000 to 12,000.

14 Q. Okay. They changed to 12,000. Did you
15 understand that that was on a percentage basis?
16 They would still would be eligible and would
17 receive credit but a percentage --

18 A. No.

19 Q. -- based upon the amount they received?

20 A. My understanding was that it was still
21 full.

22 Q. Okay.

23 MR. BARBIERE: I think you guys are
24 talking over each other.

1 A. My understanding was that it was full
2 benefit.

3 Q. Meaning they had to make --

4 A. You had to make \$1,000 a month to
5 receive full benefit.

6 Q. Okay.

7 MR. BARBIERE: But --

8 A. If it's not that, I'm -- I'm surprised.

9 MR. BARBIERE: I thought you asked
10 about a partial benefit?

11 Q. I was going to, yeah, follow up.

12 You did not understand that if they
13 made 4,000 of the 12, they would receive credit
14 for one-third of a year?

15 A. Yes.

16 Q. Okay.

17 A. I did know that, but they would not
18 receive the benefit.

19 Q. The full year credit?

20 A. They would not get a year credit. And
21 they also would not get the health benefit.

22 Q. Okay.

23 A. That is correct.

24 Q. Okay. Now, did you recall a meeting

1 with -- meeting with the commissioners back in
2 October of 2013 indicating to them that your two
3 investigators would be resigning?

4 A. No. I did not state that they would --

5 Q. Or leaving?

6 A. -- be resigning. I did meet with them
7 because I -- one of my investigators, Mike
8 Downhour, told me that he was being told through
9 whoever he was talking to that the commissioners
10 were going to get rid of -- not pay for my
11 investigators. I thought that was strange, so I
12 said I'll tell you what, I'll go to the meeting,
13 I'll ask them in an open meeting what the case is.

14 Q. Were you aware that Mike Downhour had
15 gone to the auditor and initiated retirement based
16 upon the changes in the retirement system that
17 would be not beneficial to him to keep working as
18 -- how it would affect his retirement?

19 A. Before that time?

20 Q. Around -- before January of that year?

21 A. Yeah. I don't think he did it before
22 that time.

23 Q. Okay.

24 A. Not before October because he wouldn't

1 have been concerned about his job.

2 Q. I'm not asking about concerned about
3 his job. I'm asking about concerned about the
4 changes in the retirement system, where it would
5 affect his -- adversely affect his benefits if he
6 kept working after the first of the year?

7 A. What's your question?

8 Q. Are you aware that he had applied for
9 retirement in order to beat the changes in the
10 retirement system as how it would affect him --

11 A. No.

12 Q. -- if he continued working?

13 Okay. But you were --

14 A. Because he came to me with a concern
15 about it, so I went to go discuss it with the
16 proper people.

17 Q. You had indicated if you look at the --
18 I'll show you what's marked as Exhibit 4, it
19 indicates to you this is a copy of the
20 commissioners minutes for October 3rd, 2013. And
21 at that time you informed the commissioners that
22 two of your employees would be leaving January
23 1st.

24 - - - - -

1 Thereupon, David Cummin Exhibit 4 is
2 marked for purposes of identification.

3 - - - - -

4 A. What's the date of this?

5 Q. December 3rd, 2013 at the top. Look at
6 the bottom paragraph.

7 A. It says October 3rd.

8 MR. BARBIERE: October 3rd.

9 Q. I guess it does say October 3rd. I
10 don't know if I said, but if I said anything other
11 than October 3rd, I was not correct. October 3rd,
12 2013.

13 A. Okay. That's a paraphrase. I don't
14 think that's a direct quote.

15 Q. This was the initial discussion then
16 with the commissioners about wanting to increase
17 the budget so you could hire someone that would
18 get full PERS benefits?

19 A. Yes, including my two -- my two current
20 employees, yes.

21 Q. But you told them at that time you
22 already knew that the -- two of the employees
23 would be leaving January 1st?

24 A. I don't think -- I don't remember ever

1 saying anything like that.

2 Q. Okay.

3 A. You can get a recording I'm sure and
4 see what I really said.

5 Q. Okay.

6 A. But that's not my recollection of why I
7 went to that meeting. I did not go there to tell
8 them to my recollection that I had people
9 resigning on October 3rd.

10 Q. Is the only two people you had working
11 at that time Mr. Downhour and Ms. Walsh?

12 A. Yes. And, remember, I went there
13 because Mike Downhour raised a concern I thought
14 it was ludicrous. Why would they get rid of
15 people I had for 14 years.

16 Q. Now, wasn't this before the budget time
17 -- before the budget had been presented?

18 A. Yes.

19 Q. Okay.

20 A. We have to submit our budgets August,
21 September-ish. So this is after the proposals,
22 yes.

23 Q. But it was before the commissioners had
24 issued any budgets or had set any budgets or

1 approved or disapproved?

2 A. Yes. I don't think it was approved
3 until late December.

4 Q. So at this point you -- no one knew
5 that the commissioners were not going to approve
6 an increase in the investigator's budget?

7 A. My understanding was I went there, I
8 raised a concern, they didn't act like it was a
9 real concern, and they didn't give me any reason
10 for concern that it wasn't going to be funded.
11 Clark Sheets, who was the least favorable to me,
12 just said good -- just go ahead and put it in your
13 budget and we'll take care of it or we'll look at
14 it or whatever.

15 Q. Okay.

16 A. But this is not a direct quote of what
17 went on in the meeting.

18 Q. Okay.

19 A. But -- so I went out of there and I
20 went straight to Mike Downhour and I said the
21 commissioners don't seem to have a problem as far
22 as I'm concerned of -- of adding -- I mean I fully
23 was led to believe leaving that meeting that
24 everything was positive and we were going to have

1 our two investigators. And because -- and they
2 clearly understood the reason was was because of
3 the benefit. And that my employees didn't work
4 for the money, they worked for the benefit.

5 Q. Now, you indicated also that you were
6 looking at contracting with another person on the
7 flat rate of \$75. I assume that's \$75 any time
8 they were called out?

9 A. Yes.

10 Q. Okay.

11 A. Yes. But I don't know if -- I guess it
12 would be subcontracting. We wouldn't sign a
13 contract, but apparently we're signing something
14 now through the auditor's office. We didn't use
15 to.

16 Q. Okay.

17 A. We used to just submit a requisition --

18 Q. Whether --

19 A. -- and say so-and-so covered me, pay
20 him this much money and they got paid.

21 Q. Okay.

22 A. There was no receipt or --

23 Q. But had -- at that point, had there
24 been someone you had talked to to pay a flat rate

1 for a con -- on a contract at \$75?

2 A. Not specifically, but we've had people
3 who were -- who we've called. For example, when I
4 have a dead body, I would like three people. And
5 for every additional dead person on the scene, I
6 would like an additional person so that we can
7 have one person per body with two people who are
8 not connected to a body so there's no confusion of
9 decedents which causes lots of bad lawsuits.

10 Q. So did you have a third person
11 available at that time that you used?

12 A. I had three -- I had two employees and
13 myself.

14 Q. I understand. You said --

15 A. Do I have a third employee?

16 Q. Yes.

17 A. No.

18 Q. Did you have one available that you
19 could use on a contract basis like you're saying
20 you like to have available --

21 A. We -- we would call people and say can
22 you come out. And if they're -- we've used
23 fireman before. We've used EMS people before.
24 Once again, they're not the principal

1 investigator. We just need them to stay with the
2 body so that nothing's lost, jewelry, no confusion
3 on whose artifacts are whose. That's a big
4 concern of mine. So if we have three bodies, I
5 want five people on scene.

6 Q. Okay. And you indicated you would like
7 to hire two employees and contract with another on
8 a flat rate of \$75 --

9 A. Contracted additional --

10 Q. Let me finish.

11 Contract another one on a flat rate of
12 \$75 to cover him in his absence.

13 A. I think that's a paraphrase --

14 Q. Okay.

15 A. -- and not a perfect representation of
16 what I said.

17 Q. Okay.

18 A. I wanted to be able to pay additional
19 people a \$75 fee to show up to a scene and help us
20 if we need additional personnel.

21 Q. Okay.

22 A. That's how she wrote it.

23 Q. Right. She --

24 A. That's not necessarily accurate.

1 Q. And it is a paraphrase of her. And she
2 indicates you had indicated you needed two people
3 instead of one. You -- you had been asked by one
4 of the commissioners if you could keep the same
5 budget and hire one person, in other words, give
6 them all the money so to speak?

7 A. Right.

8 Q. And you indicated you wanted \$12,000
9 per person which would -- Ms. Ogle indicated that
10 was an increase of 16,000, correct?

11 A. Yes. I mean, a little less than
12 16,000, but, yes.

13 Q. Well --

14 A. 15,700, right.

15 Q. Okay. Now, this was before the issue
16 of the employees resigning because of the
17 commissioners not approving, correct?

18 A. Yes.

19 Q. So you knew in October that they were
20 going to be leaving January 1st regardless --

21 A. No.

22 Q. -- regardless of the budget?

23 A. No. No. Remember, I went there --
24 you're saying Mike Downhour was going to retire.

1 I don't think he initiated contact with that until
2 -- to my knowledge, until after he wasn't going to
3 be approved any longer. I mean I don't know
4 that --

5 Q. Okay.

6 A. -- he went any earlier. I solely went
7 to this meeting to keep Mike's job.

8 Q. Okay.

9 A. That was my sole purpose. So you're
10 asking me if I knew they were going to resign, no.
11 I went there to save their jobs.

12 Q. Okay.

13 A. It was a very friendly meeting.

14 Q. Okay.

15 A. I probably had not been to a meeting in
16 five and a half years.

17 Q. So you think you indicating at that
18 point you already knew two employees would be
19 leaving January 1st is not accurate? That's --

20 A. That's not what I recall saying.

21 Q. Okay.

22 A. But I could be corrected.

23 - - - - -

24 Thereupon, David Cummin Exhibit 5 is

1 marked for purposes of identification.

2 - - - - -

3 Q. I'll show you what's marked as
4 Exhibit 5. And I will ask you to look at that and
5 see if it's a copy of a January 2nd dated -- a
6 letter dated January 2nd from yourself?

7 A. It seems to be half of one.

8 Q. Pardon?

9 A. It seems to be part of one.

10 Q. I don't know why that's --

11 Well, it does appear to be -- it does
12 appear to be page 1 of a letter, doesn't it?

13 A. Yes.

14 Q. All right. Do you recall if -- by
15 looking at the letter resending -- sending the
16 letter that at least this was the first page of
17 it?

18 A. It -- it is possible.

19 Q. Did you notify them January 2nd that
20 the resignation of your investigators due to lack
21 of funding?

22 A. Yes. And I had send this via e-mail
23 and personal service.

24 Q. And page 2 of that would be the e-mail?

1 A. No. No. It should be --

2 Q. It's a separate --

3 A. I don't know what that is.

4 Q. It's a January 2nd, but it appears to
5 be a separate e-mail.

6 MR. BRUNNER: Are you talking about
7 page 2 of the exhibit?

8 A. I'm sorry. Randy, there's -- this is
9 the 6th. This is the second letter I bet.

10 Q. This is -- the first one was sent then
11 was dated January 2nd but it was sent by e-mail
12 then?

13 A. And then this is January 9th, so I
14 think you're missing.

15 Q. All right.

16 A. I think you're missing -- there's three
17 letters. I don't know which one's which based
18 upon that.

19 Q. Well, let's do this then, around the
20 first of January you notified the commissioners
21 that your two employees were resigning because of
22 lack of funding?

23 A. Correct.

24 Q. And you indicate -- you call it

1 defunding, but actually they maintained funding
2 but they did not increase funding; is that a
3 correct terminology?

4 A. I don't have the budget in front of me
5 to see the numbers, but --

6 Q. Assuming they put --

7 A. You're correct.

8 Q. -- the same money in --

9 A. You're correct in that they did not
10 completely get rid of the money. They kept some
11 in there.

12 Q. Now, as of January 2nd when you
13 realized the commissioners did not increase the
14 funding as you requested, you still had the \$8,300
15 in the salaries account that had been used for
16 investigators the year before, correct?

17 A. Correct.

18 Q. And did you attempt to hire an
19 investigator -- one investigator for the 8,300 so
20 you would have someone to cover for you when you
21 were out of town?

22 A. I didn't have anybody trained in the
23 county who could perform that duty. These people
24 were trained for 14 and 8 years.

1 Q. Okay.

2 A. I can't slap a gun belt on -- Lanny
3 North cannot slap a gun belt on somebody and call
4 them a sheriff tomorrow when he's out of town. I
5 can't do the same.

6 Q. Did you --

7 A. I'm responsible for that function.

8 Q. You had contracted with -- with
9 Ms. Walsh to continue doing recordkeeping and
10 clerical work for \$500 a month you indicated?

11 A. I don't know when she accepted that. I
12 don't think -- I'm not sure she accepted that in
13 January. I'd have to look at the records.

14 Q. My belief it was July 1st that that
15 started. Does that sound correct? Does that
16 sound right?

17 A. I don't know. Initially I was by
18 myself. I had paperwork, I had some money --

19 Q. Now, Ms. Walsh was still working in
20 your private office?

21 A. Yes. She's a nurse.

22 Q. And she would not work for the 80 -- do
23 the investigator and continue -- continue doing
24 the same thing she was doing in 2013 for the

1 \$8,300?

2 A. No.

3 Q. In January what did you do to attempt
4 to find someone to be an investigator or a deputy
5 coroner to provide coverage while you were not
6 present in the county, while you were out of
7 county?

8 A. I was surprised, so I wrote the letters
9 to the commissioners stating that they had created
10 a problem we did not have previously; that they
11 had spent over \$20,000 educating my two
12 investigators and then --

13 Q. No. I'm -- Doctor, I want to cut you
14 off because -- just because of time. What did you
15 do to find someone to work as an investigator for
16 the \$8,300 or to find someone --

17 A. I didn't have --

18 Q. -- to provide the right coverage?

19 A. -- anybody trained as an investigator
20 in Hocking County to perform the duty. I couldn't
21 find anybody. There's nobody trained. I asked
22 some physicians if they would cover and they said
23 absolutely not, especially after all the bad
24 publicity I got in the paper.

1 Q. Now, I'll show you what's marked as
2 Exhibit 6.

3 - - - - -

4 Thereupon, David Cummin Exhibit 6 is
5 marked for purposes of identification.

6 - - - - -

7 Q. I believe this is the full letter.

8 A. Yes.

9 Q. It's a letter dated January 13th that
10 you sent to the county commissioners?

11 A. It is.

12 Q. 2014. At that point you -- you're
13 accusing commissioners of operating under false
14 pretenses?

15 A. I'm saying that the news article where
16 they magically found \$16 million in various funds
17 claiming they couldn't pay for my two employees
18 for 12,000 a year seemed funny, especially since
19 Judge Moses was the one who brought it to their
20 attention. Sandy Ogle had been there five and a
21 half years and had no idea they even existed, the
22 16 million, and she was the head of the two
23 commissioners at that -- head of the three total
24 commissioners at that time. And she was writing

1 budgets and not knowing that she had \$16 million
2 in reserve.

3 Q. You indicate in the last paragraph as
4 the fourth commissioner?

5 A. Yes.

6 Q. That's how you referred to yourself?

7 A. No, I'm just stating a fact. ORC
8 305.03(d).

9 Q. Well, that statute basically provides
10 that if one of the commissioners is absent due to
11 a health reason for more than 90 days I believe it
12 is?

13 A. Two have to be absent.

14 Q. If two of them are absent, yes. If two
15 of them are absent and they file physician's
16 certificates stating that they will not be able to
17 return within the 90 days, then they can continue
18 to be absent. And at that point if there are two
19 that are under physician certificate for more than
20 90 days, you would be the -- sit as the second
21 commissioner until one of them returns or the seat
22 is vacant?

23 A. And I would be paid a commissioner's
24 salary, yeah.

1 Q. Uh-huh.

2 A. That is correct.

3 Q. But that's -- that's the statute you're
4 referring to that you called yourself the fourth
5 commissioner, correct?

6 A. That is what some people refer to the
7 coroner as, yes.

8 Q. And the statute I have there is the
9 statute, the 305.03 that you're referring to?

10 A. Yes.

11 Q. Okay.

12 - - - - -

13 Thereupon, David Cummin Exhibits 7 and 8
14 are marked for purposes of identification.

15 - - - - -

16 Q. I'll show you what's marked as
17 Exhibit 8. Now, the first page of Exhibit 8 is a
18 notice you sent that it says "To Whom It May
19 Concern." This went to the commissioners, and did
20 this also go to law enforcement --

21 A. It --

22 Q. -- which was --

23 A. It went to all the EMS, 9-1-1 and the
24 Logan PD and the sheriff, yes, and I believe the

1 commissioners.

2 Q. And it says you will be out of town
3 January 9th through the 12th and January 23rd
4 through the 26th, correct?

5 A. Yes.

6 Q. And you told law enforcement, EMS to
7 contact the commissioners since you were going to
8 be out of town?

9 A. That's the best I could do, yes.

10 Q. And according to statute, it is your
11 responsibility to be available or have someone
12 available as coroner, correct?

13 A. If that's the statute, yes.

14 Q. Okay.

15 A. I would have to fund them though.

16 Q. And by the -- before you sent this
17 January 9th, was there anything other than what
18 you've already told us that you had done to
19 attempt to find someone to be available on behalf
20 of the Coroner's Office?

21 A. I had written three letters, none of
22 which were ever answered, not even with a phone
23 call to the commissioners.

24 Q. I'm not talking about the

1 commissioners. I'm -- funding another --

2 A. I think that's --

3 MR. BRUNNER: Objection. He's
4 answering you with his answer. You may not like
5 it, and you can follow it up. Don't cut him off.

6 Q. But, Doctor, I request that you answer
7 the question.

8 A. I'm trying.

9 Q. Okay. Go ahead and give us your
10 statement.

11 A. What was your question?

12 Q. My question was: Other than what
13 you've already told us, what, if anything, by
14 January 9th when you sent this notice had been
15 done to attempt to find someone to provide -- to
16 be available as a representative of the Coroner's
17 Office to provide coverage --

18 A. I had --

19 Q. -- while you were out of town?

20 A. I had asked the commissioners in three
21 letters for funding so that we could have
22 competent trained people cover me while I was
23 gone.

24 Q. Okay. Other than continuing to request

1 the additional funds from the commissioners, what,
2 if anything, had you done?

3 A. They could have paid these people or
4 they could have hired them back, whatever.

5 Q. That wasn't what I asked you. I asked
6 you what, if anything, you had done to --

7 A. I had asked around and the physicians
8 -- no physician would cover me in Hocking County
9 that I had spoken to.

10 Q. And Ms. Walsh, who continued to work
11 for you in your private office, would not provide
12 investigator services while you were gone to
13 provide --

14 A. No.

15 Q. -- coverage for the Coroner's Office?

16 A. She had resigned.

17 Q. Well, you contracted out with her later
18 on to do other services?

19 A. To do paperwork. But she was not going
20 to go to -- and do what she was doing before for
21 4,150 and no benefits. That is correct.

22 Q. Okay. But you had --

23 A. She made that very clear.

24 Q. But you had \$8,300 available in the

1 budget --

2 A. She was not going to do it. She
3 submitted her resignation. I don't know how more
4 I can state it.

5 Q. Okay.

6 A. She was not interested.

7 MR. BARBIERE: Rick, would this be a
8 good time for a lunch break you were talking
9 about?

10 MR. BRUNNER: Whatever you're ready.

11 MR. BARBIERE: Whenever it's a good
12 time for you.

13 MR. LAMBERT: Is it 1:30?

14 MR. TEETOR: Rick's buying lunch.

15 MR. LAMBERT: Let me finish this doc --
16 let me finish this document. Then we'll -- then
17 we'll do that, okay?

18 MR. BRUNNER: Okay. Sounds good.

19 Q. What physicians -- do you recall the
20 physicians you asked, Doctor, that --

21 A. Yes. Dr. Ireton and he had covered me
22 previously.

23 Q. Can you spell that?

24 A. I-R-E-T-O-N. He had covered me

1 previously.

2 Dr. Tornwall, T-O-R-N-W-A-L-L, he's a
3 surgeon. I'm trying to think of if it was
4 Dr. Neff, N-E-F-F. Those are the ones I saw in
5 that immediate time that I can for sure say.

6 Q. And had you contacted any of the
7 neighboring coroners to see if you could work --
8 have some agreement with them, coverage by them or
9 a reciprocal agreement with them?

10 A. I had not been -- I did not do that
11 because I did not have that ability to. Before we
12 would in the past cover Perry County with Dr. Brad
13 Wilson. And he was the only guy that we could --
14 that covered. And typically -- we covered him,
15 but he didn't cover us. Because we had
16 investigator, he didn't. But at that time as far
17 as I know everybody had investigators. Now, we
18 had no way to reciprocate. Typically, the
19 investigators would handle going out of county and
20 handling death scenes.

21 Q. Did you attempt to obtain investigators
22 from another county that would work on a per diem
23 basis?

24 A. No.

1 Q. They would have been qualified?

2 A. They would have. And I did contact
3 Fairfield and asked Ed Breining, who's a chief --
4 he's their chief coroner investigator, and he
5 makes over \$41,000 a year as their investigator.
6 And he just couldn't -- I mean nobody could do it.
7 Nobody was interested.

8 Q. So he was --

9 A. We were getting bad publicity, too. I
10 mean, you know --

11 Q. He was not interested in providing
12 coverage?

13 A. No.

14 Q. He did not --

15 A. His wife was ill and she eventually
16 died.

17 Q. He didn't have any investigators that
18 would provide --

19 A. I didn't know any of his investigators.
20 He had -- they have two deputy coroners and
21 there's another investigator.

22 Q. It's a much larger county of course,
23 isn't it?

24 A. It's -- I wouldn't call it a

1 metropolis.

2 Q. It's much larger than Hocking?

3 A. It's larger.

4 Q. The -- page 2 of the e-mail there
5 January 9th e-mail was sent to -- do you know who
6 docded44 is?

7 A. That's me.

8 Q. Okay. Sent -- it looks like you're
9 list -- listed twice there or --

10 A. I probably sent it to myself to be able
11 to proofread it.

12 Q. Okay.

13 A. Maybe there's a glitch with the
14 computer and I couldn't get it to -- maybe it
15 jammed up.

16 Q. And then Crystal is?

17 A. My wife.

18 Q. Okay.

19 A. Right there.

20 Q. Then the third page it looks like is
21 just a copy of the same e-mail that was sent to
22 Ms. Ogle, Mr. Sheets and Mr. Walker?

23 A. Yes.

24 Q. That are e-mails.

1 And then there was a separate letter
2 sent the same day that's attached as the last page
3 of that.

4 A. Yes.

5 Q. It says you've been waiting to hear
6 from them for contingency plans?

7 A. Yes, the commissioners.

8 Q. Would the -- the commissioners not
9 being physicians or coroners would not have any
10 ability to develop contingent plans, would they?

11 A. They could fund my -- the coverage,
12 yes.

13 Q. That's the contingent plans you were
14 looking for them to perform --

15 A. I needed more funding, yes. Nobody
16 works for free. Yes.

17 Q. Okay. And I think you indicate there
18 in the last paragraph your priority lies with
19 aiding law enforcement, correct?

20 A. Correct.

21 Q. Okay.

22 MR. LAMBERT: Okay. Do we want to take
23 that -- do you want to take a break, Mr. Brunner?

24 MR. BRUNNER: Yep. Yep.

1 THE VIDEOGRAPHER: We are off the
2 record. The time is 1:40.

3 (A short recess is taken.)

4 THE VIDEOGRAPHER: This marks the
5 beginning of disk No. 3. We are back on the
6 record. The time is 2:43.

7 BY MR. LAMBERT:

8 Q. Just to follow-up briefly, Doctor, then
9 we'll try to move on to another area. The three
10 doctors you gave us the names that you had
11 contacted, did you just do that in passing or did
12 -- did you send any written -- anything in writing
13 to anyone?

14 A. Passing in the Doctor's lounge.

15 Q. Okay. At the hospital then I assume?

16 A. Yes.

17 Q. That's the only three you recall
18 contacting?

19 A. For sure, yes.

20 Q. And I think you said you'd contacted
21 Fairfield -- the Fairfield County coroner or chief
22 investigator?

23 A. Ed Breining, B-R-E-I-N-I-N-G. And his
24 wife was ill and she eventually died.

1 Q. That was the only adjoining -- only
2 person in any adjoining counties you had contacted
3 about --

4 A. Yes. The other Athens County coroner
5 wasn't going to be in -- he didn't staying long.
6 He was retiring. And he -- and he retired within
7 a year or two. And he wasn't in office that long
8 either.

9 Q. And what do you mean not in that long?

10 A. He came in late and left early. Like
11 he resigned and -- he retired is what he did.

12 Q. Okay.

13 A. I don't know if he had so many years in
14 another aspect of the government, but he retired.

15 Q. At some point, Doctor, Sheriff North
16 had sent you a proposed possible resolution to the
17 coverage issue. It's in a letter to you. Do you
18 recall that?

19 A. He sent me a letter at sometime, yes.

20 Q. I'll show you what's marked as
21 Exhibit 30.

22 - - - - -

23 Thereupon, David Cummin Exhibit 30 is
24 marked for purposes of identification.

1

2 Q. Is that the letter you received from
3 Sheriff North? It says it's dated July 17th,
4 2014?

5	A.	Yes.
---	----	------

6 Q. And he set forth some possible areas to
7 look into whether using an investigator from the
8 Sheriff's Office. Did you consider that?

9	A.	No.
---	----	-----

10 Q. And why is that?

11 A. Because the law as I understand it in
12 the state of Ohio is that if you have the same
13 employer -- employer of the county and you try to
14 possess two different jobs of similar duties, that
15 you could not possess both jobs because there was
16 concern about overtime.

17	Q.	Okay.
----	----	-------

18 A. This was an incident that occurred I
19 believe in Hocking County in which there was an
20 employee for the EMS who I believe worked
21 full-time, 40 hours, and then he was working at
22 9-1-1 for 20 hours and I think he wanted to sue
23 the County saying that since he had the same
24 paycheck from the same employer, Hocking County,

1 that he should be given 20 hours' overtime. And
2 so the notification went out that you could not be
3 an employee at 9-1-1 and EMS because of similar
4 duties under the same employer. Same with -- and
5 that's as far as I know been the same forever and
6 ever. But I could employ a Logan police officer.

7 Q. Uh-huh.

8 A. Because they don't share the same.

9 But --

10 Q. Had you looked into that?

11 A. We have not. And the -- the problem
12 with that was Erin Miller had talked about union
13 issues and couldn't do any kind of schedule of --
14 in the future of coverage because of whatever
15 entity that was. But there's a difficulty with
16 the police union FOP, I don't know, Buckeye
17 Sheriffs Association [sic] also with unionized
18 people getting a schedule ahead of time. I don't
19 know the issues with it, but, no, we could not do
20 that.

21 Q. You had -- Erin Miller is with the
22 Logan Police Department?

23 A. He's retired.

24 Q. And you had talked -- was he with the

1 police department back in '14?

2 A. We had an issue where I wanted the
3 sheriff and the police department to have a team
4 member for child fatality deaths, and what I was
5 told was that that couldn't be done because of
6 issues with scheduling and they couldn't plan it
7 out beyond this much and that -- it was a similar
8 answer from Erin Miller and Lanny North on the
9 issue.

10 Q. I'm sorry. That last?

11 A. There was a similar answer from Lanny
12 North and Erin Miller on that issue. It was many
13 years ago.

14 Q. Okay. But there had never been any
15 discussion with him about using one or two
16 officers as investigators during the times you may
17 be out of town?

18 A. For -- who are you talking about?

19 Q. For an investigator -- for employing
20 him --

21 A. Who are you speaking of?

22 Q. -- as an investigator for the Coroner's
23 Office on a contract basis?

24 A. Who are you speaking of?

1 Q. Well, a -- someone with the Sheriff's
2 Office or someone with the police department?

3 A. The issue is there is they're not
4 trained. You know, they haven't had the \$20,000
5 of training that the other investigators had.
6 Like I said, you can't give your neighbor a
7 briefcase and call them him an attorney.

8 Q. What about the EMS, the paramedics?

9 A. They're more qualified than a law
10 enforcement officer.

11 Q. Did you consider that?

12 A. We've -- we've used them in the past
13 and that was not considered similar duties because
14 they're trying to save lives and not doing
15 medical/legal death investigations. So we had
16 employed one in the past.

17 Q. When in the past had you?

18 A. He -- he was a subcontractor. He was
19 not specifically employed.

20 Q. Okay. And when was that?

21 A. He was with us until about -- he worked
22 through 2013.

23 Q. Through 2013?

24 A. Yes.

1 Q. So he was a sub?

2 A. He was an extra.

3 Q. I'm sorry.

4 A. And he was highly qualified. And he
5 went to all the trainings and he went to the
6 yearly 20 hours of medical/legal death
7 investigation course and --

8 Q. What was his name?

9 A. Mike Stephenson.

10 Q. And had you talked to him about
11 workings a contract --

12 A. Yes.

13 Q. -- employee?

14 A. He works in Vinton County and he
15 doesn't have coverage for his cell phone. We'd
16 still use him if we can get a hold of him. He
17 would be one of your \$75 guys.

18 Q. He works for Vinton County EMS?

19 A. He does.

20 Q. He has no cell phone coverage at Vinton
21 County; is that what you're saying?

22 A. In his house. He's out in the rural
23 area of Hocking County.

24 Q. And he doesn't have a house phone?

1 A. He does. I tried both, but he hadn't
2 -- I hadn't been able to get a hold of him except
3 maybe once in the past year I would say from 2013
4 to 2014. So it was becoming difficult to even
5 consider him because I could never get a hold of
6 him.

7 Q. Anyone else -- any other EMTs you had
8 used before?

9 A. Yes, Seth Riddlebarger.

10 Q. Was he also a contract or extra?

11 A. Yes.

12 Q. And had you used him through '13?

13 A. Yes.

14 Q. And why -- why could you not use him in
15 '14?

16 A. Because he had some issues at work of
17 harassment. And I believe one of your defendants
18 was making his life difficult, so he moved his job
19 to -- above Columbus, north of Columbus.

20 Q. That was before -- before '14?

21 A. No. That was done in the last -- I
22 don't know how long. Within the last six months.

23 Q. Okay.

24 A. Six to eight months.

1 Q. And I was asking what -- if you had
2 attempt to do use him in '14 --

3 A. We have not used him. But we have used
4 him in the past, so we would use him. He works
5 about three jobs. So, once again, contractors are
6 nice --

7 Q. Uh-huh.

8 A. -- but they don't -- they don't show up
9 when --

10 Q. My --

11 A. -- you need them.

12 Q. What I was asking was had you attempted
13 to use him in '14 --

14 A. Yes.

15 Q. -- when you were not present?

16 A. Yes, he had three jobs.

17 Q. So he --

18 A. He was not contactable.

19 MR. BARBIERE: You can't talk at the
20 same time. You've got to wait for him to finish
21 his question.

22 A. I'm trying to finish my answer.

23 Q. Okay. So you had talked to him about
24 working in '14?

1 A. I talked to him in 2014, yes. But I
2 don't know if he showed up to any scenes.

3 Q. Did you --

4 A. Contractors are not obligated to show
5 up. They show up at their convenience. They
6 don't show up at 2:00 in the morning typically.
7 Employees do because they have an obligation.

8 Q. Did you ever call him out in 2014?

9 A. We have called him but he never came.

10 Q. So starting in January when the first
11 problem occurred without having coverage, you had
12 attempted to call Seth Riddlebarger?

13 A. Sure. Yes. We've called him multiple
14 times.

15 Q. I'm -- and I understand that. But I'm
16 trying to ask -- trying to get specifics. In
17 January 2014, had you made arrangements with him
18 to be available as an investigator when you were
19 not present?

20 A. We attempted to have multiple people
21 cover. He had three jobs. He was unable to
22 provide coverage.

23 Q. Okay. That's not -- that doesn't
24 answer my question, Doctor.

1 In 2014 after you learned that the
2 commissioners were not going to fully fund your
3 request for the investigators beginning January
4 1st, during the month of January did you have any
5 contact with Seth Riddlebarger about being an
6 investigator or an available investigator when you
7 were out of town?

8 A. I would say yes we did.

9 Q. Okay. When you say "we" meaning?

10 A. The office, which is me.

11 Q. Okay. And what was his response?

12 A. He had three jobs. He was unable to
13 commit to any time. I think I've said that three
14 times now.

15 Q. After January of 2014 during any time
16 of the year of 2014, was there attempts made to
17 make arrangements with Seth Riddlebarger to
18 provide coverage for the Coroner's Office?

19 A. He had three jobs. He told us he
20 couldn't commit.

21 Q. Okay. Any other paramedics or EMTs
22 that you had used in the past besides those two?

23 A. We've used Tracy Nye. He's a
24 firefighter. But he's an extra, he's not trained,

1 but he's a good extra person to have on hand, but
2 he could not handle a scene by himself.

3 Q. He would not be better than not having
4 anyone?

5 A. You cannot slap a gun belt on somebody
6 and call them a sheriff.

7 Q. I understand that, Doctor.

8 A. You can't put an untrained person out
9 there and have me take responsibility for them.
10 No, it's not going to happen.

11 Q. So you did not consider that was a
12 viable option?

13 A. No. He was untrained.

14 Q. Anyone else that you had used in the
15 past as an investigator or an extra that you
16 contacted or did not contact to --

17 A. We had used Tom Moorman.

18 Q. Moorman?

19 A. M-O-O-R-M-A-N.

20 Q. Okay.

21 A. He's another untrained but great guy to
22 have on scene with you, firefighter. He's similar
23 with Tracy Nye's capabilities.

24 Q. You did not feel he was someone you

1 could --

2 A. No.

3 Q. -- contract with to provide coverage?

4 A. No.

5 Q. Anyone else that you had used in the
6 past? Any other investigators that you had used
7 in the past?

8 A. Not that I can recall.

9 Q. Did you make any -- obviously, there
10 were more investigators you'd used in the past
11 other than Downhour and Walsh who were there in
12 '14, correct?

13 A. Right. We had Stacey Gabriel who was
14 there for six years at the office, and that's who
15 Jamie took over for.

16 Q. Okay.

17 A. She left, became -- now she's a
18 director of nursing at the hospital.

19 Q. Okay. Did you make any contact with
20 her about --

21 A. No.

22 Q. -- seeing if she would provide
23 coverage?

24 A. She had too many jobs.

1 Q. And --

2 A. She's a flight nurse. She's a -- she
3 was the head of the ER at the time. No. And plus
4 she had basically quit. She didn't want to do it
5 anymore.

6 Q. Anyone else that you've used in -- as
7 an investigator?

8 A. No.

9 Q. Who were your investigators in 2012?

10 A. Mike Downhour and Jamie Walsh.

11 Q. Okay. What about 2011?

12 A. Same.

13 Q. When did you first learn that there had
14 been an OHLEG run regarding Will Kernen and his
15 wife?

16 A. I think I started to hear about it in
17 circles, rumors of such a thing in -- let me think
18 when that was -- in 2013, about the summer of
19 2013. I'm not sure when I heard about it. It
20 would be 2013, though.

21 Q. And when you say rumors in circles,
22 explain that to me. What type of circles?

23 A. It's -- I would hear it from this
24 person maybe or that person that they -- have you

1 heard anything? And I'd go, not really. Have you
2 heard about it? I mean I would call Officer
3 Smith, Chris Smith. And he would say, yeah, I've
4 heard about them, but I don't really know any
5 specifics. Nobody seemed to know anything
6 specifically about them except that there were
7 some sort of issues with an OHLEG and stuff like
8 that.

9 Q. Now, who is Chris Smith?

10 A. He is a Logan police officer.

11 Q. Okay. And he told --

12 MR. GLASGOW: I'm sorry. What did you
13 say?

14 A. Logan police officer.

15 Q. And in the summer of 2013, he told you
16 he had heard about it?

17 A. I don't know when or what he told me.
18 You asked me who example -- what example, I can't
19 tell you specifically what he told me. But he did
20 hear about racist recordings. He heard about -- I
21 don't know what he heard. I guess -- I think I
22 misspoke. I think I heard about -- let me think
23 if I say that right. I guess with Chris Smith he
24 heard more about some racist remarks. I'm not

1 sure where I heard about the OHLEG issue.

2 Q. What's your -- what's your --

3 A. I'm sorry. Let me correct that again.

4 I did not hear about the OHLEG issue. I just
5 heard about the racist recordings in 2013.

6 Q. Okay.

7 A. That's what it is. I'm sorry. I --

8 Q. All right.

9 A. -- misspoke.

10 Q. When did you first hear about the --
11 anything about the Kernen OHLEG? Let me add to
12 that. First indication you had that there may
13 have been an OHLEG run concerning Kernens?

14 A. I think I heard about it in September
15 of 2014.

16 Q. Okay. And how -- how did you hear
17 about it?

18 A. Jeremy Dye told me.

19 Q. And regarding Mr. Dye or anyone else,
20 we don't want to know anything about their -- any
21 possible medical treatment, medical -- statements
22 concerning medical condition or anything else, but
23 was he at your -- physically at your office when
24 he told you?

1 A. Yes. He was in the exam room.

2 Q. Okay. And what did he tell you about
3 the OHLEG?

4 A. The OHLEG was not a topic. I think he
5 was discussing something about -- somehow some
6 racist recordings came up. And I said, you know,
7 I've been hearing about these for like a year. Do
8 you know anything about them? I don't -- who --
9 what's the story with them? And he said, well,
10 they're out there. And I said, well -- I mean,
11 like I keep hearing them, and I -- and that's
12 where I'd asked Officer Smith, because I figured
13 he would know. And he said, they're definitely
14 there. And I went, oh, and he -- and I don't know
15 how it came up but, somehow there was some sort of
16 issue of -- that I was going to meet with Steve
17 Schierholt soon, the head of BCI, and he --

18 Q. You'd told Dye that?

19 A. Yes.

20 Q. You had told Dye that, that you were
21 going to meet with Schierholt?

22 A. Yes. And he said, well -- and I kind
23 of was like I don't know if these recordings
24 really exist, you same to say it, I keep hearing

1 about it from -- vaguely, maybe this, maybe not.
2 And he said, well, do you want -- do you want to
3 hear them? And I said, sure, which I didn't
4 really believe they existed. And so I think he
5 went over there to his house that evening.

6 And then after I started hearing
7 recordings of Dr. Douche from Mr. Downs and a
8 20-minute derogatory recording of Judge Wallace
9 and how they should get rid of him out of office.
10 And I think Lanny said that there was five years
11 remaining and how they're going to campaign
12 against him. And then came the racist recordings.
13 And at the of it, I was probably -- I was pretty
14 shell shocked because I was shocked at what I was
15 listening to. And then he --

16 Q. You -- and you listened to the them all
17 the way through?

18 A. Yes.

19 Q. Okay.

20 A. And I did not even realize that Jeremy
21 Dye had even recorded them. I was so surprised.
22 And so he said I got -- I said -- he said are you
23 going to see Steve Schierholt? And I said yes.
24 And he asked me who he really was. And I said,

1 well, as far as I know, he's the head of BCI. And
2 so he said, why don't you walk over there. And so
3 I walked into his kitchen. And he has a desk in
4 his kitchen. So I walked over there; I didn't
5 know what was going on. And he had said you know
6 there was an OHLEG run on your attorney. And I go
7 I don't know. And then he said all you have to do
8 is -- if you are seeing Steve Schierholt it's
9 4-4-14 --

10 Q. It's what?

11 A. 4-4-14, the date.

12 Q. Oh, the date.

13 A. 9:20 a.m. I think is what it said, what
14 he said. And then I never saw it. I never
15 possessed it. I -- I just went to Steve
16 Schierholt three days later or whenever it was and
17 I said just so you know -- he was asking about the
18 Glenn Swaim investigation.

19 Q. Uh-huh.

20 A. We watched the inquest together. And I
21 said, oh, by the way, I just want you to know that
22 I heard some horrible recordings and there was
23 also some discussion out there that there may be
24 an OHLEG illegally run on my attorney and his

1 wife, but I don't know it to be true. And he --
2 and he said, okay, and he -- and he goes what can
3 you tell me? And I said I don't know; I've never
4 seen it and I never possessed it, but all I know
5 is 4-4-14, 9:20 a.m.

6 Q. Now, at that time you had not seen the
7 OHLEG?

8 A. I've never seen the OHLEG, no.

9 Q. You've never seen it?

10 A. No.

11 Q. Have you seen on a jump drive?

12 A. Can I ask my attorney a question?

13 MR. GLASGOW: There's a question
14 pending.

15 Q. Yeah. I'd rather you answer my
16 question first.

17 MR. BRUNNER: I'm not sure he can. I
18 think that's what he's telling you.

19 MR. GLASGOW: Well, there's --

20 A. I can't answer the questions you
21 give you --

22 MR. BRUNNER: You're not allowed to
23 discuss attorney/client --

24 A. I can't answer due to attorney/client

1 privilege.

2 Q. Well, I didn't ask you any
3 communication. I just asked you if you'd seen
4 it --

5 A. No.

6 Q. -- off of a jump drive?

7 A. The answer is no.

8 Q. Have you seen it on a computer?

9 A. No.

10 Q. Have you seen it at all in any way,
11 manner or form seen a copy, picture or depiction
12 of the OHLEG regarding Kernens?

13 A. I am unable to answer that last
14 question due to attorney/client privilege.

15 Q. I'm not asking about any conversation
16 or anything that was said. I'm just asking if
17 you've seen the document?

18 MR. BRUNNER: But I think that answer
19 takes place in an attorney/client conversation.
20 So I don't think you can answer that question.

21 Q. Let me ask this: Other than seeing it
22 when you were with your attorney, have you seen it
23 in any other manner or form?

24 A. No.

1 Q. Did you have any other contact with
2 Jeremy Dye after that day that you -- that he told
3 you about the OHLEG?

4 A. I'm unable to answer that due to --

5 Q. I'll rephrase.

6 A. -- doctor/patient relationship.

7 Q. Have you had any other contact with
8 Jeremy Dye --

9 A. No.

10 Q. Let me finish.

11 -- other than this meeting with him or
12 discussion -- discussions with him concerning
13 medical issues since the day he told you about the
14 OHLEG?

15 A. No.

16 Q. Without getting into any medical issues
17 or questions, at any time during any time you
18 would have seen him in your office, did you have
19 any further discussions with him about the OHLEG
20 or the recordings?

21 A. No.

22 Q. Did you ever have any discussions with
23 Captain Alford about the OHLEG or the recordings?

24 A. Never.

1 Q. Did you have any discussions with
2 Officer Boch about the OHLEGs or the recordings?

3 A. Never.

4 Q. Any discussions with anyone else other
5 than your attorney about the OHLEGs or recordings?

6 A. Not the OHLEGs. But the recordings
7 after the newspaper came out. People would say,
8 boy, that's pretty awful. And I would say, you
9 haven't heard them, they're pretty awful.

10 Q. Do you have any idea how the newspaper
11 received the recordings?

12 A. Not from me.

13 Q. Do you have any idea?

14 A. I don't know how they got them. You'll
15 have to ask them.

16 MR. GLASGOW: You've got to speak up.
17 I can't hear you.

18 A. I did not -- I did not give them to
19 them. I don't know how they got them.

20 Q. Did Dye indicate to you he had given
21 the OHLEG or a copy of the OHLEG or the OHLEG in
22 any form to anyone when he first met with you?

23 A. No.

24 Q. Or that he had shown it to anyone?

1 A. No.

2 Q. You later learned that he had given it
3 to your attorney?

4 A. Umm -- yes.

5 Q. Okay. The time you went to Dye's house
6 is the only time you ever met with him?

7 A. Yes.

8 Q. Outside of --

9 A. I don't know where he lives off the top
10 of my head, but, yes, I went -- I think I followed
11 him. He lives in the city somewhere.

12 Q. That's the only time you ever met with
13 him other than on Sheriff's Office business or
14 doctor/patient business?

15 A. Yes.

16 Q. There was an issue concerning
17 Dr. Gorniak and her providing coverage for you.
18 Initially you had submitted a proposal to the
19 commissioners asking them to approve a -- an
20 agreement with Dr. Gorniak to provide coverage for
21 50 -- \$500 a day, plus \$1,000 on any call out
22 basically as I understand; is that correct?

23 A. No.

24 Q. Okay. What was the proposal? And

1 while I'm looking to find it here. What was your
2 proposal?

3 A. She was proposed -- I'd have to look at
4 that, but I believe she was proposed at \$500 a
5 day. If the proposal says \$1,000 per call out, it
6 didn't happen. She did not charge that amount.

7 Q. You recall the commissioners responded
8 that they felt it was -- that proposal was
9 unreasonable; they wanted you to look for other
10 alternatives? Let me see here. I'll show you
11 what's marked as Exhibit 25B.

12 - - - - -

13 Thereupon, David Cummin Exhibit 25B is
14 marked for purposes of identification.

15 - - - - -

16 MR. BRUNNER: Thank you.

17 A. Yeah, this is one of my favorite
18 letters. I asked a physician, since they would
19 not cover an employee, who was competent to cover
20 me while I was absent per their request. And when
21 I found somebody for \$500 a day -- which, believe
22 me, that's pretty cheap for a doctor. Apparently
23 they decided that wasn't good enough. And I don't
24 know how much attorneys are paid, but I think \$500

1 for 24-hours coverage for a qualified forensic
2 pathologist is a pretty good deal.

3 Q. Now, that was to be available by phone,
4 right? They did not have to go anywhere or do
5 anything?

6 A. She was called four times on one Sunday
7 that she covered me.

8 Q. Okay.

9 A. She covered -- so that's 125 bucks a
10 body right there. And she did an autopsy on one
11 of the four.

12 Q. Well, the --

13 A. The -- it says --

14 Q. I found that, but --

15 A. -- asking for a favor. I'm sorry, but
16 the county commissioners want to know if I could
17 get coverage by asking for favors right here. Do
18 you see that?

19 Q. Uh-huh.

20 A. Pretty impressive.

21 Q. I'll show you what's marked as
22 Exhibit 25. I found the letter I was looking for
23 earlier.

24 - - - - -

1 Thereupon, David Cummin Exhibit 25 is
2 marked for purposes of identification.

3 - - - - -

4 Q. Is that the letter you sent to the
5 commissioners May 29th? Dated May 29th I'll say.

6 A. Let me look at it. Yes, this is --
7 what was your question?

8 Q. That's a letter you sent to the
9 commissioners dated May --

10 A. Correct.

11 Q. And that's the reference I was making
12 earlier to the proposal of \$500 a day to be
13 available and additional \$1,000 for any actual
14 call outs?

15 A. But not to Dr. Gorniak.

16 Q. Pardon?

17 A. You had mentioned Dr. Gorniak.

18 Q. Yes.

19 A. This was not her contract.

20 Q. This was just a contract for anyone?

21 A. This was one that I believe Dr. Ireton
22 said he would do it for that much and I can't
23 remember who else. But I felt like that was
24 enough money where they would actually leave their

1 family or whatever they were doing that day, leave
2 their practice and go to a scene.

3 Q. What did I do with my copy?

4 A. I was trying to do what the
5 commissioners asked me to and the prosecutor asked
6 me to do.

7 Q. So at this point it was not
8 specifically for Dr. Gorniak then?

9 A. No. This is before the Dr. Gorniak.

10 Q. After that, the commissioners had asked
11 you to try to find a proposal that was not as
12 expensive. Did you come up with any other
13 proposals?

14 A. I could not find a physician for less
15 than this much money to cover me as a deputy
16 coroner.

17 Q. Then you were gone in June and you had
18 Dr. Gorniak cover. Gone for eight days, correct?

19 A. Yes, I believe so. I'd have to see the
20 dates.

21 Q. Okay.

22 - - - - -

23 Thereupon, David Cummin Exhibit 26 is
24 marked for purposes of identification.

1

2 Q. Exhibit 26, the front sheet says
3 invoice for coroner coverage services 6-5 to
4 6-12-14?

5	A.	Right.
---	----	--------

6 Q. Now, is this something you prepared and
7 submitted on behalf of Dr. Gorniak?

8	A.	Yes.
---	----	------

9 Q. Okay. And this basically is eight days
10 at the -- at \$500 a day or \$4,000, correct?

11	A.	Correct.
----	----	----------

12 Q. Didn't you say she had three phone
13 calls on one of those days?

14 A. She had four deaths on Sunday. She
15 took care of four deaths on Sunday and autopsied
16 one of the four.

17	Q.	Okay.
----	----	-------

18 A. That's a pretty good deal.

19 Q. Now, this was not included in the
20 autopsy. The autopsy would be --

21	A.	Correct.
----	----	----------

22 | Q. -- separate?

23 A. The autopsy was billed by her county to
24 our county. She was available eight consecutive

1 24-hour days for that price for competent
2 coverage.

3 Q. Now, as I understand, the commissioners
4 questioned the -- this as to whether or not it was
5 an actual invoice; is that correct?

6 A. Which -- yes, which is strange because
7 when John Ireton covered me, I just filled out --
8 I didn't even give them this. I just gave them a
9 requisition and I wrote John Ireton seven days.
10 And what I did with him at the time was I divided
11 365 by my salary and however many days he took.
12 That way he would be bonded and everything by the
13 County in my place and he would be protected.

14 Q. What was --

15 A. And he had my investigators at his
16 disposal.

17 Q. When was --

18 A. So when I left, he had investigators.
19 When Jan Gorniak covered, she had nothing.

20 Q. When -- when was it you used Dr. Ireton
21 for that?

22 A. I would say I've used him for probably
23 eight years.

24 Q. Up until when?

1 A. Up until this incident because he
2 didn't want to -- he was not even wanting to be
3 mentioned in the contract because of all the bad
4 publicity. Nobody wanted to be mentioned. They
5 were willing to do it as long as they weren't --
6 they didn't want to be on the front page, frankly.
7 That's what they didn't want.

8 Q. So when you submitted that proposal in
9 May, Dr. Ireton was going to do it for that, the
10 amount --

11 A. Yes.

12 Q. -- set forth therein?

13 A. Yes.

14 Q. Now, how much different is that --

15 A. And I specifically mentioned his young
16 children, that he's willing to leave his young
17 children. That's his children.

18 Q. How much was it he received per day
19 whenever you paid him in the past when you divided
20 your salary? How much was that?

21 A. I don't know. You'd have to calculate
22 it out.

23 Q. Well, I'm asking.

24 A. I think it was about \$80. I'd have to

1 look, but --

2 Q. So he --

3 A. He got paid \$80 if he had to sign a
4 death certificate. Once again, he had Mike
5 Downhour and Jamie Walsh to go to the scenes. He
6 just had to sign the death certificate while I was
7 out of town; that was his real purpose. If they
8 had a question, they could call him. But he had
9 -- the investigators who could do all the work; he
10 just had to be able to sign a death certificate
11 somebody needed cremated. So if you die and you
12 want to be cremated, you have to have the death
13 certificate signed now. You can't wait eight days
14 and have it signed because you can't be cremated
15 until your burial permit, also known as your death
16 certificate, is done.

17 Q. So in the past you had done it for \$80
18 a day and --

19 A. He had sat at home and answered
20 questions and came in and signed a death
21 certificate prepared by Jamie Walsh for \$80 a day,
22 yes.

23 Q. Okay.

24 A. He did not go to scenes. He never went

1 to a scene -- well, I don't think he went to a
2 scene. Now he would be on his own, having to
3 investigate everything on his own and probably
4 spend all day out there, if you know John Ireton.
5 He's a very thorough guy.

6 Q. It looks like page 2 of Exhibit 26 was
7 an e-mail where Jan Gorniak followed up with you a
8 second -- or an actual invoice from her, which
9 would appear to be -- as I understand page 3?

10 A. Yeah, this is a copy of her e-mail --

11 Q. Okay.

12 A. -- to me. I told her that the
13 commissioners said they won't pay you unless you
14 submit an invoice, even though there is no rule on
15 the books or law that said it had to be done that
16 way. And we had not done it that way in the past.
17 There was a roadblock was to fill out an invoice
18 to be submitted on her letterhead. And of course
19 her letterhead is her home address, so -- so she
20 jumped through the hoops, I resubmitted it now
21 with her invoice, and it still didn't get paid.

22 Q. Well, page 3 still doesn't have her
23 name or address on it, does it?

24 A. I don't know what that is. That's not

1 my work product.

2 Q. It was supplied to us actually from
3 your attorney who indicated it was from --

4 A. Well --

5 Q. He had received it from you.

6 A. Well, I bet you her name is here.

7 Q. Okay.

8 A. Top left. But it was colored green, I
9 think, if I remember correctly and it may not have
10 copied well.

11 Q. Well it looks like the last document
12 December 9th right before it was actually paid,
13 you had submitted to them -- I'm -- to pay the
14 invoice previously submitted, I am resubmitting a
15 -- her bill with detailed description on her
16 letterhead for payment. It looks like December
17 9th the letterhead with her name and address, so
18 it was submitted and then the bill was paid. Is
19 that --

20 A. Well, Clark Sheets had decided to not
21 vote and then it was approved by the two remaining
22 commissioners.

23 Q. Yeah. My question was --

24 A. And John Walker had already resigned.

1 Q. My question -- my question was: When
2 it was submitted December 9th with the letterhead
3 and address on it and then it was paid?

4 A. This one?

5 Q. Then it was paid?

6 A. I believe this is her letterhead and
7 address.

8 Q. Okay.

9 A. I don't think it copied well. This is
10 not my work product. I would have to look and
11 recheck what's submitted to you.

12 Q. Okay.

13 A. But it's clear that she's got green --
14 I don't know, if she's got pink on there or what.
15 But it should have her -- I would guess it's up
16 here on the -- I'm not sure.

17 Q. Yeah. From what I got --

18 A. And she does bill for services. So she
19 would go to another county, do autopsies, and then
20 get paid per -- she would go to Cleveland and
21 do --

22 Q. Okay.

23 A. So she has her own way of doing
24 invoices. This is her product, I'm guessing.

1 Q. Okay.

2 A. It's not mine.

3 Q. If you could check that and maybe you
4 or Mr. Brunner could send that to us and see if
5 there's an address that just didn't copy when he
6 sent it or if there was a separate invoice sent
7 December 9th that has the name and address on it.
8 At some point one with a name and address was
9 sent?

10 A. Oh, yeah, there is one for sure.

11 Q. Okay.

12 A. Because I resubmitted it. But I'm
13 guessing it's this.

14 Q. But you understood that one of the
15 issues was the typed statement that they had
16 received. They'd sent it to the auditor and the
17 auditor had a question as to whether or not it was
18 something that could be paid?

19 A. I think it was the commissioners who
20 had to run it by to see if she could really bill
21 as an independent person. I'm not sure it was an
22 auditor issue, but I don't know.

23 Q. Okay.

24 A. You're -- you're asking the wrong

1 person. I did what they told me to. I did
2 exactly what they told me to the second time,
3 resubmit it with an invoice on her letterhead. I
4 did. It still didn't get paid.

5 Q. And you were going to be -- you were
6 gone July 3rd to the 5th of 2014, correct?

7 A. Yes.

8 Q. July 2nd you had a conversation with
9 Captain Alford?

10 A. I don't know.

11 Q. Do you recall calling him and telling
12 him you was going to Jamaica?

13 A. No, I don't recall it was him. But I
14 don't -- it could have happened.

15 Q. And there was a death on the 3rd while
16 you were gone?

17 A. Yes, as far as I know.

18 Q. And the Athens County coroner
19 authorized the release of the body after being
20 called by the commissioners?

21 A. He was called by Clark Sheets.

22 Q. He's a commissioner?

23 A. Yes.

24 Q. Okay.

1 A. He was. And he was -- I called the --
2 the Athens County coroner and asked him why he
3 released the body that was in our morgue. And he
4 said I was called by Commissioner Sheets and I was
5 told the body was decomposing. And I said it was
6 in a refrigerated morgue. And he said, oh, my
7 gosh, I didn't know you had a refrigerated morgue;
8 we don't have one in Athens County. I would never
9 have released the body had I known you had a
10 refrigerated morgue.

11 Q. Wasn't there some issue with the
12 funeral home indicating they had to have the body
13 within so many hours in order to --

14 A. That's not per anything that I possess.
15 That might be something that Mr. Downs was coaxing
16 from somebody. But I would be willing to put any
17 of my funeral home people on the stand to say that
18 you can embalm a body three to four days without
19 difficulty. And when I told him that statement,
20 that a body can decompose in two to three days,
21 they thought that was ludicrous and that it was
22 probably made by an uncertified mortician who is
23 more of a manager and not a person certified. I
24 would --

1 Q. So that caused you to assume it was
2 Detective Downs?

3 A. I read it in his stuff.

4 Q. Pardon?

5 A. I read it in his things.

6 Q. Read what?

7 A. In his submitted --

8 Q. Read what?

9 A. That he had gotten the statement from
10 some funeral home director that said that the body
11 was decomposing.

12 Q. Okay. Then you were at -- you were
13 going to be gone again in July -- looking at
14 Exhibit 2. Now, you indicate that you on July
15 16th -- and I believe that was the day or two
16 before you left to be gone during the latter part
17 of July; is that correct?

18 MR. BARBIERE: What paragraph are we
19 on?

20 MR. LAMBERT: 43.

21 Q. Saturday -- I believe you were -- you
22 were gone the 18th or 19th for -- I don't remember
23 how many days. Do you recall --

24 A. Eleven.

1 Q. -- being gone for 11 days?

2 A. My niece's wedding, yes.

3 Q. July -- July 16th you were aware that
4 your budget for lab and morgue expense had \$610 in
5 it?

6 A. Yes.

7 Q. Now, you were at the commissioners
8 meeting on the 16th or 17th. At that time did you
9 ask for additional moneys to be put into lab and
10 morgue account since you were going to be gone for
11 11 days?

12 A. I asked for additional money to be
13 placed because we were out of money in May. And I
14 asked that in order to complete the year I needed
15 \$30,000.

16 Q. I --

17 A. That included lab and morgue.

18 Q. I understand. But did you ask for
19 specific lab and morgue money at that time?

20 A. For a lesser amount for the lab and
21 morgue, no. I asked for 30,000, which was going
22 to cover my lab and morgue, because we'd already
23 expended all of our lab and morgue by May.

24 Q. Well, the commissioners always -- would

1 you agree they'd always put money in lab and
2 morgue any time you would ask for it?

3 A. They had before. But until that
4 meeting they didn't.

5 Q. Until that meeting they didn't. I'm
6 not sure what you mean.

7 A. They did until that meeting.

8 Q. Well --

9 A. They didn't do anything. They -- I was
10 at the meeting, I almost pleaded with them to put
11 money in there, and they did not.

12 Q. Actually, you was out of money in your
13 lab and morgue by April, weren't you, of that
14 year. Do you recall that?

15 A. I don't know when I was out.

16 Q. Should --

17 A. I just know when I left town there was
18 \$610.25.

19 Q. I'll show you what's marked as
20 Exhibit 27B. That was a letter to you indicating
21 that they had transferred \$5,500 into your lab and
22 morgue account?

23 - - - - -

24 Thereupon, David Cummin Exhibit 27B is

1 marked for purposes of identification.

2 - - - - -

3 A. Okay.

4 Q. You had asked for additional moneys at
5 that time?

6 A. Yes.

7 Q. Had you made a similar request for
8 additional moneys in the lab and morgue account in
9 July 2016 before you left for 11 days?

10 A. Did I write them another letter?

11 Q. However you'd --

12 A. I --

13 Q. How do you normally ask for additional
14 moneys in your lab and morgue account?

15 A. I can do a letter or I can show up to
16 the meeting and formally request it in person. I
17 think formally requesting in person is a bigger
18 deal than writing a letter.

19 Q. Well, when you showed up in person you
20 were asking for the additional \$30,000, not
21 specifically money in the lab and morgue account,
22 correct?

23 A. There are very few line items in the
24 budget. I don't know where else I would have put

1 it. I can't put it in the first line item of my
2 salary. I can't put it in my second one, which is
3 my PERS. I mean, there's none in my supplies,
4 so --

5 Q. What was it --

6 A. Where do you think I was going to put?

7 Q. Was part of it -- part of that 30,000
8 was the increase in salaries for the employees,
9 correct?

10 A. I don't know if I specifically said
11 that or not. I know that I was expecting to spend
12 \$30,000 more for the -- for the remainder of the
13 year and most of it was going to be in lab and
14 morgue because I was out.

15 Q. But you knew they would always add the
16 lab and morgue money. I mean they had done it for
17 years, right?

18 A. It was -- I didn't know they were going
19 to. I had some hostile -- no, I would say no.
20 They've already -- they acted towards me in that
21 October 3rd meeting, if that's when the date was
22 of the previous year, that just submit the
23 salaries of \$12,000 on your budget and we'll look
24 into it. I did not come out of the meeting

1 feeling like they weren't going to do it. So I
2 would say they misled me. Why would you tell me
3 to put the money in there and then not do
4 anything? That was suggested by them. They
5 suggested --

6 Q. Okay.

7 A. -- that I put the 12,000 into the
8 budget. I didn't say I want to put \$12,000; they
9 suggested that to me. And then when January 1st
10 came, it wasn't there. So I would argue to you
11 that, no, they have not come through when they
12 promised to some degree because I had done
13 everything possible. I jumped through every hoop
14 that they asked me to do. I tried to find
15 coverage. I tried to do everything. There's
16 multiple attempts that you have brought to my
17 attention that I've tried to remedy the situation.
18 And even if I jumped through the hoops, they still
19 refused it. So I would say, no, your answer is
20 no, they did not do what they said they were going
21 to do.

22 Q. So you're saying if we get of the
23 transcript that October meeting there was a
24 promise to put the additional salaries in --

1 A. I am telling you --

2 Q. -- your budget?

3 A. -- that they suggested to me to put
4 that in the budget.

5 Q. In your proposed budget?

6 A. Yes.

7 Q. Okay. You didn't expect them to give
8 you everything that you asked for in your proposed
9 budget, did you?

10 A. I didn't ask for anything else.

11 Q. Okay.

12 A. I only asked for one thing.

13 Q. Now, had there ever been a time prior
14 to July 19th, 2000 -- or July -- the date of the
15 meeting, July 17th, 2014, that you had
16 specifically asked for an additional funding for
17 the lab and morgue account or for transportation
18 of decedents that it had not been paid by the
19 commissioners or added to your budget, that line
20 item, for payment?

21 A. What is your question?

22 Q. Had there ever been a time since you
23 have been commissioner -- or coroner that you
24 would ask for additional funds in your lab and

1 morgue account or for the transportation of
2 decendents that the money had not either been put
3 in the account or it had been paid directly out of
4 the general fund?

5 A. If I wrote a letter, it could be put in
6 several days later. It is possible. But once
7 again --

8 Q. Okay.

9 A. -- they were not following through with
10 their end of the bargain anymore.

11 Q. And you're saying that October 13th
12 meeting was a bargain that they didn't follow
13 through on regarding the salaries?

14 A. I am saying they suggested -- why would
15 you tell me to put money in there and then decline
16 it? Just tell me you're not going to do it.

17 Q. Well, one possible way, wouldn't it,
18 that they needed to look at the entire budget and
19 decide how much money they did have?

20 A. I can't tell you what they were
21 thinking.

22 Q. Okay.

23 A. But -- I think I wouldn't tell somebody
24 to put money in the --

1 Q. I'm not sure you answered my question.
2 My question is: Do you recall any time prior to
3 July 17th, 2014 that you had asked for additional
4 moneys for lab and morgue or transportation of
5 decedents to supplement your budget that it had
6 not been granted or the bills paid directly by the
7 commissioners?

8 A. Specifically when I asked for those in
9 writing, no.

10 Q. Okay.

11 A. For those line items individually.

12 Q. And you knew before you left town that
13 you had \$610.25 in the lab and morgue account?

14 A. I did.

15 Q. There was a death while you was gone?

16 A. There was.

17 Q. And you -- the Sheriff's Office got a
18 hold of you or talked to you -- was able to
19 contact you?

20 A. Yes.

21 Q. And you refused to authorize the body
22 to be sent at that time for autopsy?

23 A. No. I said that I couldn't send a body
24 for autopsy without having the amount of money in

1 that in the line item because that would be
2 illegal.

3 Q. And you had --

4 A. I would be held personally possible for
5 that amount of money.

6 Q. And you had sent bodies before for
7 autopsies even though you did not have sufficient
8 moneys in that line item, correct?

9 A. I don't know to that -- that to be true
10 at all.

11 Q. Did you ever check before whenever
12 you've sent a body for an autopsy to see if there
13 was money in the line item before you sent it?

14 A. We knew how much money was in there.
15 We knew -- we didn't submit bills without it.
16 Sometimes if it was getting low, John Walker or --
17 I don't know if there was another commissioner who
18 would come in and they would say, hey, I just want
19 you to know we put some extra money in here. And
20 I believe that's what happened here. I don't
21 think I -- I'm not sure I requested that. I think
22 John Walker may have come by and said we noticed
23 you were getting low and put that in there. I'm
24 just saying they didn't put money in there

1 necessarily because I asked for it. They -- their
2 job is to monitor the budget and they may have
3 just said I noticed you're low.

4 Q. From what I was able to learn through
5 the auditor, the auditor would get bills for the
6 lab and morgue account that would be over the
7 balance. And then the Auditor's Office would have
8 the commissioners put money in so they could pay
9 the bills.

10 A. I don't know the answer to that
11 question.

12 Q. Were you ever contacted by the auditor
13 saying we got a bill for your lab and morgue
14 account and you don't have enough money?

15 A. No.

16 Q. So if that happened, then it would make
17 sense that they would contact the commissioners
18 and the commissioners would put money in there
19 then?

20 A. I don't know what they're doing.
21 You're asking me --

22 Q. Do you know whether or not that has
23 happened in the past?

24 A. No.

1 Q. Bills come in for the lab and morgue
2 account, not enough money, and the Auditor's
3 Office would contact the commissioners and have
4 them put money --

5 A. I'm not aware of that happening.

6 Q. Okay. Are you aware that it happened
7 where bills would come in and there would not be
8 enough money in the lab and morgue account in the
9 past?

10 A. No.

11 Q. And I'm not sure if you specifically
12 answered this. I don't mean to be -- to reask it.
13 Had there been times you had sent a body for
14 autopsy knowing there was not enough money in
15 there at that time for the autopsy but sent the
16 body anyhow because you knew the money would be
17 put in there?

18 A. No.

19 Q. So the times -- if the Auditor's Office
20 has times where bills for autopsies would be
21 received and there not be enough money there, that
22 would be a time you didn't know what the balance
23 was in the account?

24 A. That would be a time that I was

1 unaware. Our numbers didn't always match their
2 numbers.

3 Q. So you was -- so you was unaware then
4 of the balance of the account when you sent the
5 body for the autopsy at that point if that
6 happened?

7 A. I did not authorize autopsies to be
8 done if I did not -- if I knew there wasn't enough
9 money in there. That is correct.

10 Q. But if the Auditor's Office from time
11 to time received bills for that account that
12 exceeded the balance in there, you -- that would
13 have been a time you would not have known what the
14 balance was?

15 A. That is correct. I would not have
16 known that we were -- did not have enough money in
17 there. But we tried to stay on top of it, and
18 that was part of Jamie's job too. Jamie knew it
19 was 610.25 and I knew it was 610.25 when I left
20 tow.

21 Q. But generally how low would the lab and
22 morgue account get before you would ask for
23 additional moneys to be put in?

24 A. Usually 2,000 maybe.

1 Q. Okay. But had -- at this point, there
2 had not been any request for additional funds from
3 the time the 5,000 was put in in April, correct?

4 A. It was busy season.

5 Q. Is that correct?

6 A. Yes. We got five autopsies with
7 \$5,500, yes. \$1,100 a piece.

8 Q. So you -- who was it you first told
9 that you would not authorize the body to be sent
10 without being assured additional moneys would be
11 put in the account?

12 A. John Walker called me in New York -- I
13 had called John Walker. I think I called him.
14 Yeah, I called John Walker and then he called me
15 back.

16 Q. Okay. And did he basically tell you
17 we've always put money in there, it will be put in
18 Tuesday?

19 A. He didn't pay Jan Gorniak's bill.

20 Q. I don't think -- that wasn't part of my
21 question at all, Doctor.

22 My question was: In that conversation
23 did he tell you we have always put money in that
24 account when you need it; we'll put money in there

1 Tuesday?

2 A. No, I don't think he said that.

3 Q. Well --

4 A. I told him I didn't have enough money.

5 He said he could assure me that there would be
6 money put in there. And I said, John, you can
7 only speak for one of the three commissioners.
8 You cannot -- I need at least two commissioners to
9 tell me that because I'm not going to be charged
10 with any more lawsuits. We're going to do things
11 by the book and that's how it's going to be. I
12 need some assurance that there will be money in
13 there so that I don't get -- so I'm not breaking
14 the law.

15 Q. Well, you knew the commissioners could
16 not do that over the phone -- they could not pass
17 a resolution over the phone, didn't you?

18 A. I didn't ask for any resolution to be
19 passed.

20 Q. You did not?

21 A. No.

22 Q. Didn't ask for a resolution?

23 A. No. I did not ask for a resolution at
24 all.

1 Q. What did you ask for?

2 A. I told him -- I didn't ask for
3 anything. I just told him that I needed assurance
4 that there would be money put in the account that
5 would cover the autopsy. I didn't ask for a
6 certain amount. And he said after he -- he was
7 pretty unhappy. He said I'm sick of all this.
8 And when I calmed him down, I said, John, I cannot
9 legally order -- I can't legally spend money that
10 I don't have in my line item; it's illegal. And
11 he said I'll see what I can do. That's where it
12 was left.

13 Q. So you didn't ask for anything specific
14 other than --

15 A. No.

16 Q. -- that?

17 A. No.

18 Q. Just an assurance is all you asked for?

19 A. Yes. Correct.

20 Q. Okay. Now, at that time then it was
21 your understanding that you -- if you exceeded
22 that line item you could be personally responsible
23 or if you exceeded your budget?

24 A. No, that line item.

1 Q. Okay.

2 A. I was under the impression, and my
3 attorney has also told me the same thing, that I
4 cannot spend money that's not in the line item.

5 Q. But --

6 A. It has to be transferred.

7 Q. But you know once the money is put in
8 your budget you can transfer within your budget?

9 A. I did not have enough money in that
10 line item.

11 Q. That's not what I'm asking you, Doctor.
12 Did you know that you could transfer moneys from
13 other line items --

14 A. Yes.

15 Q. -- into that line item to cover --

16 A. Yes.

17 Q. -- that?

18 There was sufficient money in your
19 budget to have covered that autopsy in other line
20 items?

21 A. Where? I -- where?

22 Q. You didn't have eleven or twelve
23 hundred dollars in -- left in your budget for that
24 year?

1 A. You have to --

2 Q. Doctor --

3 A. -- specifically send a request.

4 Q. Doctor, just answer my question.

5 A. Okay.

6 Q. Did you have \$1,500 left in your entire
7 budget --

8 A. I don't know.

9 Q. -- at that -- you don't know?

10 A. You're asking me -- show me a budget
11 and I'll tell if you there was enough in there.

12 Q. Okay. So you don't know if you had the
13 \$1,500 in your budget --

14 A. I did not have enough --

15 Q. -- as of July?

16 A. -- money in my line item for --

17 Q. I know, Doctor. I'm not on asking
18 about the line item. I asked if there was other
19 accounts in your budget -- you knew you had 610 --

20 A. That is correct.

21 Q. -- in your lab and morgue?

22 A. Right.

23 Q. And the autopsy would have been how
24 much, a thousand, eleven hundred?

1 A. \$1,100.

2 Q. So you needed five hundred and -- \$500?

3 A. Yes.

4 Q. And you did not know at that point when
5 you were talking to John Walker whether or not you
6 had \$500 in another line item that you could have
7 transferred?

8 A. I did not have assurances that money
9 would be transferred from one line item to another
10 or that additional money would be put in that line
11 item.

12 Q. Well --

13 A. You're asking me to commit an illegal
14 act of spending money that's not in that line item
15 and I'm not going to do and I didn't do it.

16 Q. You knew you had the freedom to
17 transfer within line items within your own budget,
18 didn't you?

19 A. I can, but that takes requests. And I
20 -- you are asking me to spend the money and then
21 put the money back there later. That's exactly
22 what you're asking.

23 Q. Well --

24 A. I'm not doing it.

1 Q. I'm asking you if you knew you had the
2 money and you could transfer it so you knew it
3 would be covered if --

4 A. I knew I did not have enough money.

5 Q. Let me finish. If they did not put the
6 money in the lab and morgue, you knew you had
7 enough money to transfer to cover it if for some
8 reason for the first time ever they didn't put
9 money in the lab and morgue, correct?

10 A. What's your question?

11 Q. You knew at that -- on July 19th that
12 you had sufficient money in your budget that you
13 could have transferred to cover that autopsy if
14 the commissioners for the first time failed to put
15 money in the lab and morgue account on Tuesday?

16 MR. BRUNNER: Objection to form.

17 Q. Is that --

18 MR. BRUNNER: You can answer the
19 question.

20 Q. Is that correct, Doctor?

21 A. No. I did not have enough money --

22 Q. Okay.

23 A. -- in the line item to --

24 Q. See, Doctor, that wasn't my question.

1 A. You are asking me to play a shell game
2 and put money in later after it's been spent and
3 I'm not going to do that. It has to be done
4 before you spend the money.

5 Q. But I did not ask you --

6 A. That's the law.

7 Q. -- whether or not you had money in the
8 line item. I'm not asking you whether or not you
9 had money in the line item.

10 A. You're asking me to commit an illegal
11 act.

12 Q. Okay.

13 A. You're asking me to say, hey, there's
14 money somewhere else, we'll charge it on this
15 credit card and replace it later, that's not how
16 the county budget works.

17 Q. So what other discussions with anyone
18 did you have that night about what you were
19 expecting before you would transfer the body?

20 A. The characterization that you are
21 saying is wrong.

22 Q. Okay.

23 A. At no time did I ever say that we would
24 not move the body, as I had seen on Ms. Ogle's

1 thing. That is false. The body was transferred
2 to the morgue. I asked Lanny North to Zip Tie it.
3 And it was under lock and key in the morgue. We
4 could not send the person because we didn't have
5 identification on him. I do not send bodies to
6 Franklin County Morgue without the vital
7 information required.

8 I called Detective Downs and David
9 Valkinburg the following day and I got the Social
10 Security number, the birth date, the person, the
11 address, next of kin, all that stuff. And when I
12 had that, the body was then sent from our locked
13 morgue to Franklin County. At no point -- now, if
14 I didn't get anything money-wise put into the
15 account or an assurance that it was going to
16 happen, then he would have stayed in the morgue
17 until I got back and talked to the commissioners.

18 There's no evidence that's going to be
19 lost. He's locked down. Lanny Zip Tied the bag.
20 Everything's perfectly fine. He's refrigerated.

21 Q. Let me show you what's been marked as
22 Exhibit 28.

23 - - - - -

24 Thereupon, David Cummin Exhibit 28 is

1 marked for purposes of identification.

2 - - - - -

3 Q. Did I give you my copy? There it is.

4 If first page is an e-mail from Lanny North to you

5 on the -- by now we're into the morning of the --

6 July 20th. Correct? Is that a --

7 A. I didn't know there was a question.

8 Sorry.

9 Q. Oh, the -- the first page is an e-mail

10 from you to -- from Lanny North to you. It says

11 "Please review the attached document authorizing

12 an additional appropriation." Correct?

13 A. That's a question?

14 Q. Is that --

15 A. Yes.

16 Q. Is that what that is?

17 A. Yes, that's what this is.

18 Q. You recall -- my last question is you

19 recall receiving this?

20 A. I got this on my iPhone, yes.

21 Q. Okay. The attachment to that, then, do

22 you recall the handwritten document that's at

23 page 3 to this exhibit as being what was attached

24 by Lanny North?

1 A. This is what they created for whatever
2 reason.

3 Q. Now, look at the last page of that
4 exhibit, a statement signed by John Walker. I
5 mean, at this point John Walker was actually a
6 patient of yours?

7 A. I'm unable to answer that under --

8 Q. Okay.

9 A. -- doctor/patient relationship.

10 Q. Mr. Walker had indicated to me that he
11 had been a patient of yours.

12 A. That's his choice.

13 Q. Okay. John states that you told him
14 his word was not sufficient. I think you
15 indicated in -- in different words maybe you said
16 that, correct?

17 A. Yes. One out of three commissioners
18 was not enough to act upon three, yes.

19 Q. That he wanted a resolution e-mailed to
20 him saying he could spend money out of a line item
21 without having sufficient funds in that line item?

22 A. I never mentioned the word "resolution"
23 ever.

24 Q. You never mentioned you wanted a

1 resolution e-mailed to you?

2 A. Never. That was what they chose to the
3 to do. I didn't ask -- he told me he was going to
4 do what he could do. I just told him I needed --
5 my word was reassurance. That's different than
6 resolution.

7 Q. Okay. And he says again I told him
8 that it's standard protocol to put money in lab
9 and morgue and transport line items whenever these
10 funds are low. Would you agree with that
11 statement?

12 A. These are not his words I don't think.
13 They don't sound like John Walker to me, but --

14 Q. Did he tell you that?

15 A. Can I -- I don't think he said it like
16 that. I think he said we put money in there
17 before. Now, if you want to say that's what he
18 said, that's different. But he never said it's
19 standard protocol. That's false.

20 Q. And --

21 A. I don't think those are his words at
22 all. He doesn't talk like that.

23 Q. John's statement says "He," I --
24 referring to you -- "again said my word was not

1 sufficient and he wanted an e-mail saying he could
2 do this." Do you recall that?

3 MR. BRUNNER: Excuse me, can I hear
4 that question again?

5 (The record is read as follows: John's
6 statement says "He," I -- referring to you --
7 "again said my word was not sufficient and he
8 wanted an e-mail saying he could do this." Do you
9 recall that?)

10 MR. BRUNNER: I'll object to that
11 because I don't see anywhere in that where it says
12 again.

13 MR. BARBIERE: "He again said..."

14 MR. BRUNNER: Where?

15 MR. GLASGOW: Second -- second word in
16 the sentence.

17 MR. LAMBERT: "He again..."

18 MR. BRUNNER: What line in 22?

19 MR. LAMBERT: Well, it's the next to
20 the last line, the first paragraph at the end of
21 the line on the right.

22 MR. BRUNNER: Okay. I thought you were
23 reading above.

24 MR. LAMBERT: Okay. I'll read it again

1 for clarification. He said -- "He again said my
2 word was not sufficient and he wanted an e-mail
3 saying he could do this."

4 A. Yes, I think that's accurate. I don't
5 think those are his words, but I would say that's
6 accurate. Yeah, I wanted something that I had to
7 fall back on in case I got arrested for spending
8 money that I didn't have illegally.

9 Q. Doctor, what damages are you claiming
10 you have suffered as part of this lawsuit?

11 A. I don't think specifically that they've
12 been listed by my attorney yet.

13 Q. Well, can you tell us what damages you
14 have?

15 A. Not until we have a consultation about
16 what those are going to be specifically.

17 Q. Well, what --

18 A. There's loss of income. There's --

19 Q. Are you claiming loss of income?

20 A. Yes. I don't know the amount.

21 Q. And this is loss of income out of your
22 private practice?

23 A. Yes.

24 Q. This is something you've not calculated

1 yet?

2 A. May I say something? Is it proper for
3 a defendant to keep smiling at me? Can we exclude
4 him if he's going to continue to mock me over
5 there?

6 MR. GLASGOW: Don't acknowledge it,
7 just -- don't acknowledge it.

8 THE WITNESS: Okay. If it's okay.

9 Q. The loss of income from your private
10 practice you've not yet determined?

11 A. No.

12 Q. And for what period of time you -- do
13 you claim you had a loss of income?

14 A. That's going to be determined also.

15 Q. When do you -- when do you believe that
16 this loss of income started, what period of time?

17 A. We'll have to determine that at the
18 time.

19 Q. Well, what -- if you haven't determined
20 it, what causes you to believe there was a loss of
21 income?

22 A. Because you have my tax returns and you
23 have my loss of revenue sheets in front of you and
24 you can see there's dramatic decrease. Loss of

1 patients, loss of income, media.

2 Q. Do you know of any specific patients
3 you lost because of this?

4 A. I'm unable to say due to patient --

5 Q. Without giving me the name --

6 A. -- confidentiality.

7 Q. I didn't ask for the name. I asked do
8 you know of any specific patients that you lost as
9 a result of this?

10 A. Yes.

11 Q. And how many patients do you claim you
12 lost as a result?

13 A. We haven't specifically determined that
14 yet. And I don't think that's determinable, if
15 that's a word.

16 Q. How do you know you -- specifically
17 that you lost patients?

18 A. Because I was told that people were
19 finding other doctors because they thought I was
20 going to jail or leaving the community.

21 Q. And those people -- then the patients
22 themselves told you?

23 A. Yes.

24 Q. Besides loss of income, is there any

1 other area of damage that you believe you've
2 suffered?

3 A. I think my attorney and I will have to
4 sit down and discuss what those specifics are,
5 yes.

6 Q. Well, without getting into specifics,
7 we -- you can get with him and give us those
8 specifics, but I --

9 A. We can in the future, yes, we can.

10 MR. BARBIERE: What was that answer?

11 A. We can in the future, yes, give you
12 those specifics.

13 Q. Without -- I'm not asking for the
14 specifics at this time. I'm just asking for the
15 area so we can know what to ask for in the future.
16 What are the areas -- other than loss of income,
17 what other type damages are you claiming?

18 A. I'd have to talk to my attorney about
19 what specific damages that we are seeking. I
20 think it specifically says to be determined by a
21 jury in the complaint, but I'm not an attorney and
22 I don't know the proper wording. And I don't --
23 I'm not going to exclude based upon my testimony
24 what is and is not going to be limited to this or

1 that. I don't know enough information to answer
2 your question. I can tell you legal fees will be
3 in there, obviously.

4 Q. Legal fees. Did you have legal fees in
5 the criminal case?

6 A. Yes, and this one.

7 Q. How -- how much were the legal fees in
8 the criminal case?

9 A. I think that's been supplied to you.

10 Q. I asked you how much your legal fees --

11 A. About \$10,000 for the -- Will Kernen.

12 MR. GLASGOW: Again, the air
13 conditioning has kicked on, so I can't hear you.

14 A. About \$10,000 for Will Kernen.

15 Q. And have you paid legal fees to
16 Mr. Brunner --

17 A. Yes.

18 Q. -- at this point?

19 And how much have you paid him at this
20 point?

21 A. I have no idea. I pay him on a monthly
22 basis. I could not give you within \$10,000 of how
23 much I paid him.

24 MR. LAMBERT: Okay. Let's take a short

1 break.

2 MR. BRUNNER: Okay. How much time do
3 you --

4 MR. LAMBERT: Restroom and --

5 THE VIDEOGRAPHER: We are off the
6 record. The time is 3:55.

7 (A short recess is taken.)

8 THE VIDEOGRAPHER: This marks the
9 beginning of disk No. 4. We are back on the
10 record. The time is 4:12.

11 Q. Doctor, backing up a little bit to
12 January. After you had sent the January 9th
13 letter to the commissioners -- I think we found
14 that in -- huh. I don't seem to find it. Let me
15 show you this and I will let you look at it and I
16 will see if I can find it. That's Exhibit 21,
17 which would appear to be a letter to you from the
18 prosecutor responding to a January 9th letter you
19 had sent in the commissioners. I ask you to look
20 at that and I'm going to ask you if you recall
21 receiving that letter?

22 - - - - -

23 Thereupon, David Cummin Exhibit 21 is
24 marked for purposes of identification.

1 - - - - -

2 Q. Do you recall receiving that letter
3 from the prosecutor?

4 A. Yes.

5 Q. And after that letter the prosecutor
6 had filed a complaint for a writ of mandamus
7 regarding the question about the coverage or
8 coroner coverage while you were out of -- out of
9 the county?

10 A. I'm not sure I understand this letter
11 anyway.

12 Q. Well, I just asked -- yeah, you
13 received this letter?

14 A. I received it.

15 Q. Okay.

16 A. But it didn't make any sense because it
17 says I violated protocol. I don't know anywhere
18 in that protocol that it's violated.

19 Q. The -- there was a writ of mandamus
20 filed in the Court of Appeals seeking a mandamus
21 for you to provide -- be available to provide
22 coverage -- oh, that's -- you keep this.

23 I'll show you what's marked as
24 Exhibit 22 and we'll represent to you that that is

1 a copy of the writ of mandamus complaint.

2 - - - - -

3 Thereupon, David Cummin Exhibits 22 and 23
4 are marked for purposes of identification.

5 - - - - -

6 Q. Do you recall receiving that, Doctor?
7 That being filed?

8 A. I got it through my attorney I believe.

9 Q. Okay. The --

10 A. Actually, I may have received this and
11 sent it to my attorney.

12 Q. Okay. Paragraph 7 says that "On
13 January 10th, 2014, employees of the Hocking
14 County Sheriff's Office attempted to contact the
15 coroner with regard" -- with regard "to a deceased
16 individual located in Hocking County. He did not
17 personally respond, nor did he send other staff."
18 Was that correct?

19 A. I don't -- I'm unaware of a coroner
20 case on January 10th, 2014.

21 Q. Okay.

22 A. Do you have a death certificate?

23 Q. You were -- you were gone -- were you
24 gone the 9th through the -- I don't remember --

1 did you go out of town on the 9th, I believe?

2 A. I went out of town on the weekend, but
3 I'm unaware of a coroner case that weekend. Do
4 you have a death certificate to show me?

5 Q. No, I do not.

6 I think you indicated you were going to
7 be gone the 9th to the 12th, correct? Your prior
8 exhibit we had, the last page of that which is an
9 exhibit to that --

10 A. Yes. But I'm unaware of a coroner case
11 on January 10th, 2014.

12 Q. The writ of mandamus was voluntarily
13 dismissed by the prosecutor at a later time,
14 correct? Was that your understanding?

15 A. It -- it was because of a remedy, which
16 I'm unaware of what the remedy was. Yeah. That
17 has action to --

18 Q. Here's a copy of the --

19 A. To remedy the situation. I don't know
20 what the remedy was. Nothing was changed.

21 MR. BARBIERE: What was the last thing
22 you said?

23 A. There was not -- she says that I have
24 taken action to remedy this situation. And the

1 answer is I don't know what remedy was done.

2 Q. This was --

3 A. Nothing changed that I knew of.

4 Q. This was --

5 A. Except that I got an attorney.

6 Q. This was filed a few days after Jan
7 Gorniak covered for you June 16th while you were
8 out of town I believe. This was filed the 23rd.
9 She had provided coverage for you the weekend
10 before this was dismissed.

11 A. Okay. But she never got paid until the
12 next commissioners, yes.

13 Q. Well, she may not have, but you did
14 have someone --

15 A. I did not --

16 Q. -- provide --

17 A. -- know that that was the remedy.
18 Okay?

19 Q. Now, I've got copies of part of the
20 responses to discovery. I've got the whole
21 document with you and I only made copies of the
22 parts that I was going to -- going to ask
23 questions about.

24 MR. LAMBERT: Mr. Brunner, I've got the

1 whole document here if you want to see it --

2 MR. BRUNNER: That's fine.

3 MR. LAMBERT: -- if there's any
4 question about it.

5 Q. We've been killing enough trees in this
6 case, if I can just copy what I'm going to ask
7 about. No. 25 and 25A, I think we've already
8 covered that.

9 Now, are you aware that Mr. Dye said
10 that he told you about the OHLEG while he was in
11 your office, did not mention to us about meeting
12 you at his house? Are you aware of that in his
13 deposition?

14 A. I -- maybe. I mean that's what
15 happened, but -- and I told you that, too, that I
16 went to his house because he told me in the
17 office, yeah.

18 Q. No. He told you about the OHLEG --

19 A. Oh.

20 Q. -- in your office --

21 A. Oh, I don't know if that's -- I mean I
22 don't remember -- you're right. I'm not sure I
23 remember it that way, but it's -- I mean --

24 Q. You've seen where he said that, though,

1 that he told you in the office?

2 A. I don't remember.

3 Q. Okay.

4 A. It's possible. I mean I don't remember
5 it.

6 Q. And I know you said today the first
7 time you heard about it was at the house. Could
8 it have been at the office and then -- or was it
9 at the house in the kitchen like you was telling
10 us about?

11 A. I mean, he has a -- he has a way that
12 he thinks it happened. And I have a way I thought
13 it happened. I don't know which one of us is
14 right.

15 Q. Okay.

16 A. I'm not sure it's that different --

17 Q. Fair enough.

18 A. -- except for location. It's all same
19 day.

20 Q. I had asked in the discovery the
21 efforts you had made in December of '13 and
22 January of '14 to employ an investigator or deputy
23 coroner. I think you provide additional answers
24 today to that one.

1 A. I did.

2 Q. Now, your response to No. 28 would
3 indicate you committed \$500 a month to Ms. Walsh a
4 total of 6,000. So did -- did you pay her \$500 a
5 month as a subcontractor for the entire year then?

6 A. She was paid monthly.

7 Q. I understand. But 6,000 committed
8 would be \$500 month.

9 A. Yes.

10 Q. Which would be 6,000.

11 A. And I don't know if she took this -- I
12 don't know when that was effective, but, yes.

13 Q. Well, if it was 6,000, would have been
14 the whole year, correct?

15 A. Would have been January, correct.

16 Q. No. 5 there it says talk to several
17 people and nobody interested. I know you've given
18 us some names today. Is there anyone else that
19 you're referring here that you talked to other
20 than who you told us about --

21 A. No.

22 Q. -- earlier today?

23 Number 35 on page 12, the presentation
24 you're talking about -- and I did not bring that

1 with me. I saw a presentation where you had
2 indicated where the entire -- it would -- you
3 needed ninety-some thousand as a total budget; you
4 only got sixty-some thousand. That's where the
5 \$30,000 shortfall was in the budget you had
6 requested. Is that the presentation you're
7 talking about? Does that --

8 A. I don't know.

9 Q. Okay. I did not bring it with me
10 today. Number 38 -- most of these we've gone over
11 today, so I am just skipping over the ones I had
12 notes to actually ask questions on.

13 Number 38, on page 13 I think we've
14 identified it as Exhibit 32, but I'm not sure we
15 did. So Exhibit 32 says they refused any
16 supplies, equipment and zero in line item. Are
17 you -- are you saying there was ever any time you
18 had requested specifically moneys for supplies or
19 equipment that they had refused or just that there
20 had been a zero in the line item in the budget?

21 - - - - -

22 Thereupon, David Cummin Exhibit 32 is
23 marked for purposes of identification.

24 - - - - -

1 A. What's the question again, sir?

2 Q. Yeah. You indicate they refused any
3 supplies, and I'm trying to --

4 A. Yes. I have a line item of supplies
5 and it has zero dollars. And my question was to
6 them: Why would you just not delete the line item
7 if you are going to have a line item that says
8 zero? Doesn't make sense on a budget --

9 Q. But --

10 A. -- to have a list something and you
11 give nothing to it. You just delete the line
12 item --

13 Q. Were there times --

14 A. -- if you're not going to pay for it.

15 Q. Were there times where you had bills
16 for supplies you submitted and bills for supplies
17 that they paid?

18 A. Yeah.

19 Q. Okay.

20 A. Body bags.

21 Q. But any time you would ask for bills
22 for supplies, even if there was zero in the line
23 item to be paid, they would -- those would be paid
24 by the --

1 A. I don't know that we've ever had zero
2 in that line item before.

3 Q. Oh, when was this?

4 A. I had zero in the budget.

5 Q. Had it been -- had it been the whole
6 year that -- your budget had zero in that line
7 item?

8 A. Yes. I was allocated zero dollars for
9 supplies that year.

10 Q. Okay. During the year did you ask for
11 any supplies to be paid or submit bills for
12 supplies to be paid?

13 A. No, because I didn't have any money in
14 there. Just like I can't ask for an autopsy for
15 \$610.25 either.

16 Q. So basically the basis of your response
17 is there that the line item had zero in it and not
18 that they actually refused bills for equipment or
19 supplies that you'd asked for; is that right?

20 A. No. 38 says paragraph 55. And it
21 says: Because of past experiences with county
22 commissioners, including prior refusal to pay for
23 the unbudgeted invoice, Franklin County Coroner,
24 and because of a single commissioner does not have

1 the authority under Ohio law to bind the entire
2 board, Dr. Cummin declined to act based upon
3 Defendant Dr. Walker's oral representation.

4 I didn't fail to act based upon them
5 not putting any supplies in my line item of zero.
6 I did it --

7 Q. All right.

8 A. -- because they weren't paying bills
9 when I submitted after I did everything they
10 wanted me to.

11 Q. But that's your answer, Doctor, you
12 said that -- but is that then not correct? I
13 guess you just said that's not why --

14 A. I would say that they had broken their
15 previous way of doing things when they refused to
16 pay a bill that I had the money in the budget to
17 pay it. As far as I knew, I had the money to be
18 able to pay her and they wouldn't let it happen.
19 Therefore I couldn't transfer money, therefore I
20 couldn't be assured that I was going to have
21 enough money -- you had alluded to that I had
22 enough money in my budget to pay an eleven hundred
23 bill, right?

24 Q. Uh-huh.

1 A. But yet I had enough money to pay her
2 bill but they didn't let me transfer the money,
3 right? So that's why I couldn't do the autopsy
4 because you're saying you got the money somewhere
5 else, you can move it later. Well, I had the
6 money to pay Jan Gorniak, but they didn't let me
7 move that.

8 Q. Well, now, there was never any refusal
9 to move money to pay that bill, was there? They
10 were dealing with it, paying it directly
11 themselves, not out of your budget?

12 A. Oh, no. No. No. We -- no. I think
13 we wanted to pay that out of our budget. In fact,
14 it eventually came out of our budget. We had the
15 \$8,000 in the budget to pay it -- I mean the
16 \$4,000 in the budget to pay it.

17 Q. But there was never any request to
18 transfer moneys in line items regarding the
19 Gorniak bill, was there?

20 A. I'd have to see the budget for the
21 amount of money in there. But we had enough
22 money. And the reason that -- if you look at
23 Ms. Ogle's comment, the reason they approved it
24 two to zero was because the money was in the

1 budget, the \$4,000 was there. Did we move things
2 around in line items, yes. You were asking me
3 earlier why I didn't authorize the autopsy when I
4 did not have enough money in the line item, and my
5 answer to you is because I had enough money in my
6 budget to pay Jan Gorniak, but they didn't let me
7 move the money around that time either. And that
8 was before the autopsy, correct?

9 Q. Did you ask for a transfer of money at
10 the time for Gorniak that was denied or just asked
11 for the bill to be paid?

12 A. I asked the bill to be paid. And I
13 would have to look at my budget to see where the
14 money was. But the money was in there and we
15 could have moved it.

16 Q. Okay.

17 A. But it was denied.

18 Q. But you're right, it was never denied
19 because didn't have the money in the budget?

20 A. It was approved because eventually
21 Ms. Ogle said he's got the money in his budget why
22 don't we pay the bill. And it was paid in
23 December, not by -- it was paid by a new
24 commissioner, Ms. Ogle, and then abstained by the

1 outgoing commissioner.

2 Q. But you never understood them denying
3 it in the past because there was not money in a
4 particular line item, right?

5 A. Tell me if I'm wrong, but I think that
6 the Jan Gorniak bill was before the autopsy. Am I
7 wrong on that?

8 Q. Yes. I'm saying they never denied the
9 Gorniak bill or never did not pay it because of a
10 question of whether or not there was money in a
11 particular line item. That was never an issue
12 regarding Gorniak, was it?

13 A. I'm not sure whether I'm following
14 you --

15 Q. Well --

16 A. Your logic is they would have moved
17 money this time, but they didn't move money before
18 that.

19 Q. No, sir. I'm not saying that at all.
20 All I'm saying is they never did refuse to pay
21 Gorniak or not pay Gorniak because of a question
22 about whether or not there was money in the line
23 item. It was --

24 A. You're right.

1 Q. -- purely about the what type of bill
2 it was.

3 A. You're right. But as the elected
4 official, I am given a budget and it's up to me on
5 how I spend my budget.

6 Q. And you moved --

7 A. But they micromanaged me.

8 Q. Uh-huh.

9 A. They decided what I could and couldn't
10 pay for. That money was allocated to me, the
11 elected official, to spend how I see fit. That's
12 how the budget in counties are supposed to work.

13 Q. When you said they micromanaged and
14 decided what you could pay for and what you
15 couldn't --

16 A. Yes.

17 Q. -- what -- in what regard? What --
18 give us an --

19 A. They didn't want to pay Jan Gorniak
20 even though I have money in there.

21 Q. Well, we just talked about the fact
22 that --

23 A. They didn't authorize payment out of my
24 budget, how's that.

1 Q. Okay. Okay. But we had talked about
2 the fact that they did not authorize it because of
3 the manner that the bill was submitted?

4 A. They didn't like the bill. They said
5 it was too high. If I have the money and I'm the
6 elected official of the county office, they give
7 me a budget, I spend my budget how I see fit.

8 Q. Now, was it -- is there any document
9 anywhere that commissioner said her bill was too
10 high?

11 A. There was a letter that said it was
12 unreasonable.

13 Q. Well, your proposal -- your proposal to
14 have a contract available was unreasonable.

15 A. I don't know why they denied it. They
16 just declined it. I don't think it ever went
17 anywhere. It just sat on their desk and they let
18 it just kind of sit there.

19 Q. We talked before about the reason it
20 was denied is the way it was submitted, it was not
21 actually submitted on a bill?

22 A. But it was two weeks later.

23 Q. Well --

24 A. And then it still wasn't paid.

1 Q. I think the --

2 A. For five more months.

3 Q. The e-mail to you where she submitted
4 it on the letterhead was actually end of
5 September, which was --

6 A. Okay. It wasn't paid for three months.
7 We had paid John Ireton and everybody else without
8 invoices. And when I went to the meeting and I
9 asked them why they weren't paying it and they
10 said, well, it wasn't on an invoice. I said,
11 well, is that a rule because -- are you telling me
12 you don't ever pay bills? And she said, Ms. Ogle
13 said, well, I'd like it to be that way.

14 Okay. So what did I do? I did exactly
15 what she asked and it still didn't get paid. I
16 made every attempt to accommodate all of your
17 defendants. I have made so much effort all by
18 myself with no employees to do everything I can to
19 accommodate them, but nothing satisfies them.
20 I've done everything. There isn't anything that
21 they've requested that I didn't do. Nothing. You
22 can find nothing that I haven't done to
23 accommodate them. I -- I challenge you to find
24 it.

1 MR. LAMBERT: I'd mentioned to you
2 earlier, Mr. Brunner, about us leaving at 4:30
3 since it would be rather late for us to finish up.
4 And I know -- I think I'm about done and the other
5 counsel yet. So I would like to --

6 MR. BRUNNER: Well, as you know it's my
7 preference that we finish today; it's my client's
8 preference. I can't keep you here. We'll have to
9 work out when and how we resume.

10 MR. LAMBERT: Okay.

11 THE VIDEOGRAPHER: This adjourns the
12 deposition. We are off the record. The time is
13 4:35.

14 (Signature not waived.)

15 - - - - -

16 Thereupon, the foregoing proceedings
17 concluded at 4:35 p.m.

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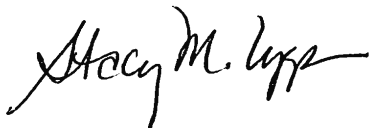
1 State of Ohio : C E R T I F I C A T E
2 County of Franklin: SS

3 I, Stacy M. Upp, a Notary Public in and for the
4 State of Ohio, certify that David L. Cummin, was by
5 me duly sworn to testify to the whole truth in the
6 cause aforesaid; testimony then given was reduced
7 to stenotype in the presence of said witness,
8 afterwards transcribed by me; the foregoing is a
9 true record of the testimony so given; and this
10 deposition was taken at the time and place
11 specified on the title page.

12 Pursuant to Rule 30(e) of the Federal Rules of
13 Civil Procedure, the witness and/or the parties
14 have not waived review of the deposition
15 transcript.

16 I certify I am not a relative, employee,
17 attorney or counsel of any of the parties hereto,
18 and further I am not a relative or employee of any
19 attorney or counsel employed by the parties hereto,
20 or financially interested in the action.

21 IN WITNESS WHEREOF, I have hereunto set my hand
22 and affixed my seal of office at Columbus, Ohio, on
23 May 12, 2016.

24 

Stacy M. Upp, Notary Public - State of Ohio
My commission expires August 6, 2016.

Witness Errata and Signature Sheet
 Correction or Change Reason Code
 1-Misspelling 2-Word Omitted 3-Wrong Word
 4-Clarification 5-Other (Please explain)

Page/Line	Correction or Change	Reason Code
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I, David L. Cummin, M.D., have read the entire transcript of my deposition taken in this matter, or the same has been read to me. I request that the changes noted on my errata sheet(s) be entered into the record for the reasons indicated.

Date_____Signature_____

The witness has failed to sign the deposition within the time allowed.

Date_____Signature_____

Ref: SU21344DC S-SU P-^